01/13/93
FMICFNL\FMAGMT.23

CONFIDENTIAL

AGREEMENT

64278

Fort McDowell Indian Community Water Settlement

THIS AGREEMENT, dated as of January 15, 1993, is entered into by the Fort McDowell Indian Community, the United States of America, the State of Arizona, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Central Arizona Water Conservation District and the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert.

TABLE OF CONTENTS

		Page
1.0	RECITALS	3
2.0	DEFINITIONS	5
3.0	STIPULATIONS AND AGREEMENTS	8
4.0	ANNUAL WATER DUTY	8
5.0	TOTAL WATER REQUIREMENT AND LIMITATION	8
6.0	SOURCES OF WATER	10
7.0	DIVERSION OF WATER	13
8.0	KENT DECREE WATER	17
9.0	SRP STORED WATER	19
10.0	RWCD RIGHTS AND WATER TRANSFER TO FMIC	21
11.0	OTHER WATER	26
12.0	FMIC CAP ALLOCATION	28
13.0	VERDE RIVER SPILL WATER	29
14.0	SRP DELIVERY FEE	29
15.0	LIMITATIONS ON TRANSPORTATION AND USE OF FMIC WATER	30
16.0	MINIMUM FLOW	30
17.0	VERDE RIVER DIVERSION WORKS	31
18.0	ENVIRONMENTAL COMPLIANCE	32
19.0	FMIC WAIVER OF CLAIMS	32
20.0	LEASING OF WATER	35
21.0	COST SHARING RESPONSIBILITIES	38
22.0	OTHER PROVISIONS	40
23.0	SIGNATURE BLOCK	58

EXHIBITS

Paragraph 2.0

"2.1" Fort McDowell Indian Community Water Rights Settlement Act

"2.8" Map of FMIC Reservation

Paragraph 8

"8.1" Bartlett Dam Amendment

Paragraph 9

"9.2" Map showing boundaries of area described in Paragraph 9.2 of this Agreement

Paragraph 10

"10.2" RWCD Credit Lands

Paragraph 11

"11.1" Agreement between the Secretary of the Interior and the Harquahala Valley Irrigation District

Paragraph 19

"19.1" Waiver and Release of Claims - FMIC

"19.5" Gila River Adjudication Stipulation

"19.6.1" Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users Association, et al., CIV 79-267 PHX PGR Dismissal with Prejudice

"19.6.2" U.S. Court of Federal Claims Dismissal

"19.6.3" Federal Tort Claims Dismissal

Paragraph 20

"20.1.3" Terms and Conditions of Project Water Lease Agreements

"20.1.6" FMIC CAP Water Delivery Contract Amendment

"20.1.7" City of Phoenix - FMIC Project Water Lease Agreement

Paragraph 22

"22.6" 1977 Water Commissioner's Report

"22.13" Statement of Policies and Principles Regarding the Use of CAP Facilities to Facilitate Indian Water Rights Settlements

1.0 RECITALS

1.1 The continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right claims based upon federal, state and other law. These include claims by the Fort McDowell Indian Community to a tribal homeland water right sufficient to irrigate and develop the Community's reservation northeast of Phoenix. In addition, the validity of certain non-Indian claims to water and the liability of the United States and other water users to the Fort McDowell Indian Community have been raised. These issues are the subjects of extensive and complex litigation pending in the Arizona state and federal courts.

1.2 It is recognized by all parties to this Fort McDowell Water Rights Settlement Agreement ("Agreement") that the resolution of these conflicts must recognize long-standing vested water rights arising under Federal law, State law, the Kent Decree and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. Settlement of these issues must also accommodate the imperative need of the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler, and the Town of Gilbert to satisfy increasing

municipal and industrial (M&I) water demands.

1.3 The representatives of the United States of America, the State of Arizona, the Fort McDowell Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Central Arizona Water Conservation District and the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, and the Town of Gilbert have agreed to permanently settle the water rights and damage claims of the Fort McDowell Indian Community, to finally resolve pending litigation of water rights, and to seek funding for implementation of the settlement.

1.4 It is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.5 The objective of this settlement is to resolve all outstanding water-related litigation and settle once and for always the water rights of the Fort McDowell Indian Community and its members based upon federal, state and other laws by providing to the Fort McDowell Indian Community sufficient water from various sources to irrigate 4,000 acres of agricultural land and to develop 18,350 acres for urban and other uses within the FMIC Reservation.

NOW, THEREFORE, in consideration of the premises and of the

promises and agreements hereinafter set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which will have meanings as stated below.

2.1 "Act" shall mean the Fort McDowell Indian Community Water Rights Settlement Act of 1990. Pub. L. 101-628, Title IV, 104 Stat. 4480 (1990). The Act is attached as Exhibit 2.1 to this Agreement.

2.2 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as amended.

2.3 "CAP Master Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

2.4 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the Contractor under the CAP Master Repayment Contract.

2.5 "Divert(s)", "diverted" or "diversion(s)" shall mean to remove

or the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump or other act of man.

2.6 "Effluent" shall mean water which, after being withdrawn as groundwater or diverted as surface water, has been used for domestic, municipal or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

2.7 "FMIC" shall mean the Fort McDowell Mohave-Apache Indian Community, a community of Yavapai Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary, and its members.

2.8 "FMIC Reservation" shall mean that area of land described in Exhibit "2.8" to this Agreement.

2.9 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as IN RE the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) including subsequent enforcement proceedings therein.

2.10 "Kent Decree" shall mean the decree dated March 1, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of the Third Judicial District of

the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

2.11 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP which for the purpose of this Agreement is limited to modifications to Roosevelt Dam on the Salt River.

2.12 "Rio Verde" shall mean Rio Verde Utilities, Inc., its successors and assigns, or any entity diverting water for use by the community of Rio Verde.

2.13 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

2.14 "Secretary" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

2.15 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.16 "SRPMIC" shall mean the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary.

2.17 "SRRD" shall mean the Salt River Reservoir District as defined, on the effective date of this Agreement, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Users' Association.

3.0 STIPULATIONS AND AGREEMENTS

This Agreement includes as exhibits additional and subsidiary documents in the form of contracts, stipulations for settlement of litigation, waivers of claims, legislation, maps, reports, and policy statements, all of which are attached hereto and incorporated herein.

4.0 ANNUAL WATER DUTY

The FMIC Reservation land to be irrigated with the water provided by this Agreement will be served with new, modern delivery facilities. Accordingly, a water duty of 4.5 acre-feet per acre per year can be used for the purposes of this Agreement to calculate the water required to irrigate 4,000 acres of agricultural land on the FMIC Reservation. A water duty of 1 acre-foot per acre per year is used to calculate the water required for the 18,350 acres to be developed for urban and other uses on the FMIC Reservation. The water duty shall not limit the actual use, application rate, or management of water within the FMIC Reservation.

5.0 TOTAL WATER REQUIREMENT AND LIMITATION

With the exception of Verde River Spill Water described in Paragraph 13.0 hereof, and based on the water duties as described in Paragraph 4.0 hereof the total maximum annual diversion by or for the FMIC Reservation from all sources shall be limited to 36,350 acre-feet. Any entitlement to water of any individual member of the FMIC for lands within the FMIC Reservation shall be satisfied out of the water resources provided to FMIC in this Agreement.

Effluent developed on the FMIC Reservation from the sources listed in Paragraph 6.1 hereof shall be used or reused for such purposes on the FMIC Reservation as FMIC may determine and shall not be included in the total maximum annual diversion right of 36,350 acre-feet.

Diversion by entities other than FMIC from within the exterior boundaries of the FMIC Reservation in fulfillment of those other entities' independent state or federal water rights, including specifically the City of Phoenix, shall not count against FMIC's total maximum annual diversion right of 36,350 acre-feet.

In addition to the water provided to FMIC under this Agreement, FMIC may, consistent with state and federal law, acquire rights to water pursuant to state law or by contract with the United States, provided, however, that no rights so acquired shall be based upon claims waived pursuant to Paragraph 19.0 of this Agreement and Section 409 of the Act, nor shall the acquisition of any such rights vitiate the Waiver and Release of Claims executed by FMIC and the United States pursuant to Paragraph 19.0 of this Agreement and Section 409 of the Act.

6.0 SOURCES OF WATER

6.1 The total maximum annual diversion right of 36,350 acre-feet will be derived from the following sources in the quantities set forth in the table below. The ability to divert water by or for FMIC is conditioned by and dependent upon limitations and restrictions set forth in this Agreement and particularly in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0, 15.0, 16.0, and 20.0 hereof.

SOURCE TABLE

Source	Amount (acre feet per year)	Return Flow Factor (see ¶7.1)	Maximum Annual Diversion From Verde River (acre-feet)	See ¶
6.1.1 Kent Decree	7,060	-	7,060	8.0 22.7(c)
6.1.2 SRP	4,730	-	4,730	9.0
6.1.3 SRP (non-ag. use only)	2,000	-	2,000	9.0
6.1.4 RWCD	3,200	x 1.0526	3,368	10.0
6.1.5 Other Water	13,933	x 1.0526	14,666	11.0
6.1.6 FMIC CAP Allocation	4,300	x 1.0526	4,526	12.0
Total	35,223		36,350 acre-feet	

6.2 Except for the CAP water identified in Paragraphs 11.0 and 12.0 hereof, the priority date of the water available for diversion by or for FMIC from the sources listed in Paragraph 6.1 hereof shall be the priority date of those sources as determined in the Gila River Adjudication.

6.3 Neither SRP nor any other party to this Agreement shall be liable to FMIC for failure to store Verde River water or deliver water to FMIC from the sources described in Paragraphs 6.1.2 through 6.1.6 hereof as a result of an insufficient supply of water from the Verde River, hostile diversion of water from the Verde River or its tributaries contributing to an insufficient supply of water, compliance with the provisions of Articles VIII and IX of the November 22, 1946 Agreement between the Salt River Valley Water Users' Association and the City of Phoenix, or interruption of deliveries or releases made necessary by maintenance, repairs, or construction to facilities, damages caused by floods, unlawful acts, accidents, emergencies, and to avoid damage to outlet facilities. In the event that such failure to deliver Verde River water is a result of hostile diversion of water, SRP, FMIC and the United States agree to undertake joint and good faith efforts, including court action if necessary, to end the hostile diversion.

Insufficient supply of water shall be defined for purposes of this Paragraph 6.3 as insufficient stored Verde River water to fill the water orders of FMIC, Rio Verde and the City of Phoenix infiltration gallery and pumps. In the event there is insufficient stored Verde River water to deliver to FMIC, SRP

shall release from the Verde River reservoirs as much of the inflow to the reservoirs as is required, first, to satisfy all water demand under the Kent Decree, and thereafter, to fill the water orders of FMIC, Rio Verde and the City of Phoenix' infiltration gallery and pumps. If insufficient inflow exists to meet all of the water orders specified in this Paragraph, priority of delivery shall be in accordance with the date of contract with FMIC, Rio Verde and the City of Phoenix after satisfaction of all water demand under the Kent Decree (including the FMIC entitlement under the Kent Decree).

6.4 The quantities of water to be provided from the sources identified in paragraph 6.0 hereof shall be binding only on the parties to the Agreement. Except as among the parties to the Agreement, and except as to FMIC's total maximum annual water entitlement as specified in this Agreement, nothing in this Agreement shall be construed or interpreted as establishing a right to use water from the Gila River System and Source by any party to the Agreement. No party to the Agreement shall be liable to FMIC for failure to deliver water to FMIC by reason of any final judgment or decree of any court of competent jurisdiction which shall render, in whole or in part, performance of its obligation to deliver water from the sources and in the amounts specified in Paragraph 6.0 herein impossible. The preceding sentence shall be in addition to and shall not supersede or in any way alter the protections from liability for failure to store or deliver Verde River water to FMIC, set forth in Paragraph 6.3 herein, or for failure to maintain the minimum

flow in the Verde River below Bartlett Dam, set forth in Paragraph 16.0 herein.

7.0 DIVERSION OF WATER

7.1 A total maximum annual diversion right of 36,350 acre-feet is provided to FMIC in this Agreement. The right consists of total diversions by or for FMIC from the Verde River less any measured return flow to the Verde River from the main FMIC canal when the return flow is maintained at a constant and continuous rate for a twenty-four hour period from midnight to midnight. The FMIC maximum annual diversion rights from the Verde River specified in Paragraphs 10.0, 11.0 and 12.0 hereof (which are also identified in Paragraphs 6.1.4 - 6.1.6 hereof) are greater than FMIC's water entitlements under these Paragraphs by a factor of 1.0526 because of the agreed upon return flow accruing to the Verde River from the actual use of the water attributable to these sources on the FMIC Reservation.

7.2 All diversions by or for FMIC will be made from the Verde River above Granite Reef Dam or from groundwater pumpage on the FMIC Reservation. All such diversions and any changes in diversions, except groundwater pumping, shall be ordered by FMIC from SRP at least 24 hours in advance of any diversion. FMIC shall report all groundwater pumpage volumes to SRP monthly. SRP shall fill the water order of FMIC from the Verde River as provided in Paragraphs 7.2.1 through 7.2.3 hereof for the water sources described in Paragraphs 6.1.1 through 6.1.6 hereof only

to the extent that water is available to SRP from the Verde River to fulfill FMIC water orders as provided in Paragraph 6.3 hereof.

7.2.1 SRP shall fill the water order of FMIC from the Verde River for the water source described in Paragraph 6.1.1 hereof as provided in the Kent Decree and Paragraph 8.0 hereof. SRP shall fill the water order of FMIC from the Verde River for the water sources described in Paragraphs 6.1.2 and 6.1.3 hereof as provided in Paragraph 9.0 herein.

7.2.2 SRP shall fill the water order of FMIC from the Verde River for the water sources described in Paragraphs 6.1.5 and 6.1.6 hereof to the extent exchange water credits have previously been developed by SRP on behalf of FMIC. Exchange water credits shall be developed by SRP on behalf of FMIC by multiplying the number of acre-feet of water actually received by SRP from the exchange sources described in Paragraphs 11.0 and 12.0 hereof by a return flow factor of 1.0526. Exchange water credits developed by SRP on behalf of FMIC will be available for diversion by FMIC as provided in Paragraph 7.2 hereof. The FMIC exchange water credits shall be limited to a maximum of 12,000 acre-feet of credits at any time, including any credits carried over from the prior calendar year. Evaporation losses will be deducted from the exchange water credits monthly by SRP at the rate of one-half of one percent of the exchange water credit balance at the end of each month. Exchange water credits shall be subject to spill as provided in paragraph 22.8 hereof. SRP shall notify FMIC of exchange water credits developed,

evaporation losses applied to exchange water credit accounts, and exchange water credits spilled when such periodic accounting is performed.

7.2.3 SRP shall fill the water order of FMIC from the Verde River for the water source described in Paragraph 6.1.4 hereof as provided in Paragraph 10.4 hereof.

7.3 FMIC shall install and maintain devices capable of measuring and recording all diversions of water by or on behalf of FMIC and any return flows from FMIC canals measured pursuant to Paragraph 7.1 hereof. Those measuring and recording devices shall have an accuracy commensurate with measuring and recording devices used by SRP for similar purposes. FMIC shall also install and maintain measuring and recording devices and develop measurement and accounting procedures satisfactory to the parties to this Agreement to account for the usage of water within and outside of the area described in Paragraph 9.2 hereof on the FMIC Reservation. FMIC shall grant SRP and RWCD a joint and reasonable right of access to inspect and to verify the accuracy of all measuring and recording devices and of the measurement and accounting procedures used by FMIC. For purposes of this Agreement, monthly access for inspection purposes with at least 24 hours notice to FMIC is presumed to constitute reasonable access. Where circumstances warrant, SRP may seek more frequent access for inspection and verification purposes from FMIC, and such access shall not be unreasonably denied by FMIC.

SRP shall have the right to install, operate, repair

and maintain, at SRP's expense, water flow sensing and telemetry equipment on any or all water flow measuring devices for purposes of remotely monitoring water diversions or return flow by or on behalf of FMIC. Access to the FMIC Reservation to repair and maintain water flow sensing and telemetry equipment installed by SRP shall not be denied, but shall be subject to a requirement of advance notice of not less than 2 hours to the FMIC Council President or his designee. SRP will make available to FMIC, at FMIC's request, water flow data developed from the water flow sensing and telemetry equipment.

7.4 No later than March 1 of each year FMIC shall file in the Gila River Adjudication an accurate and complete annual accounting of the amount of water, identified by the specific sources described in Paragraph 6.1 hereof, diverted for the FMIC Reservation, both within and outside the area described in Paragraph 9.2 hereof, during the preceding calendar year. On or before April 1 of each year, SRP will reconcile the FMIC water entitlements and diversions for the previous calendar year. If FMIC diversions exceed the maximum annual diversions permitted under this Agreement as determined by this reconciliation, FMIC will reduce its diversions for the current year by the amount of such excess. Such reductions shall be deducted from FMIC's water entitlements for the current year and transferred to SRP in the following order: 1) SRP stored water as described in Paragraph 6.1.2; 2) RWCD credits; 3) Kent Decree water; 4) Other Water exchange credits (if not leased); 5) CAP Allocation water exchange credits (if not leased); 6) SRP stored water as

described in Paragraph 6.1.3. Nothing in this Paragraph 7.4 shall limit or otherwise restrict the parties' right to enforce the terms of this Agreement by specific performance or otherwise.

SRP will maintain a separate water account for each source of water described in Paragraph 6.1 hereof. Water diversions, less return flows as provided in Paragraph 7.1 hereof by or on behalf of FMIC will be deducted from the various FMIC water account credit balances by SRP in the following order: Kent Decree daily normal flow, Verde River Spill Water, RWCD Water, Kent Decree Stored Water, SRP Stored Water for non-agricultural uses, SRP Stored Water for any use, CAP Allocation water exchange credits and Other Water exchange credits. To the extent that FMIC water orders are filled by SRP as provided in Paragraphs 7.1 and 7.2 hereof and FMIC fails to divert the amount of water ordered, then the amount of water ordered in excess of diversions shall also be deducted from the FMIC water account balances as provided in the preceding sentence. SRP will provide to FMIC monthly reports showing the current credit balance in each water account at the end of the month. Not more than once every 5 years, FMIC may revise the order in which various FMIC water accounts are debited by water diversions by or on behalf of FMIC. FMIC shall notify SRP of such revisions for a given calendar year no later than July 1 of the preceding year and such revisions shall remain in effect unless and until revised again by FMIC.

8.0 KENT DECREE WATER

8.1 Historically FMIC has used only a part of its Kent Decree entitlement described in Paragraph 6.1 due to demand being less than available supply during parts of the year. FMIC is unable to store surplus portions of its normal flow entitlement for future use. In order that FMIC may use more fully its Kent Decree entitlement, SRP and the United States agree to provide to FMIC up to 3,000 acre-feet of the existing storage space of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the FMIC's entitlement to water under the Kent Decree. This storage space shall be for seasonal reregulation only, with no annual carry-over past September 30. Monthly evaporation losses will be charged and deducted at the rate of one-half of one percent (1/2%) of the end of month FMIC Kent Decree stored water balance. The FMIC Kent Decree storage entitlement shall spill from Bartlett Reservoir on the Verde River as specified in Paragraph 22.8 hereof. The United States and SRP shall amend the Bartlett Dam agreement as provided in Exhibit "8.1" hereto to provide for the FMIC Kent Decree storage entitlement provided by this Paragraph. The FMIC Kent Decree storage entitlement provided in this Paragraph 8.1 shall terminate not more than 25 years from the date the authorizations contained in Section 409(b) of the Act become effective.

8.2 The Cities of Phoenix, Glendale, Scottsdale, Mesa, Tempe, Chandler and the Town of Gilbert, the United States, CAWCD, RWCD and SRP will cooperate with FMIC in obtaining any necessary state or federal approval for joint use of the storage

space in existing SRP Verde River reservoirs consistent with this Paragraph 8.0, including using their good offices to assist in obtaining the cooperation of others necessary for such approvals.

9.0 SRP STORED WATER

9.1 SRP shall provide a maximum annual diversion right of 6,730 acre-feet of SRP stored water to FMIC for use solely within the area described in Paragraph 9.2 hereof. SRP stored water provided to FMIC pursuant to this Paragraph 9.0 is an annual diversion entitlement and any unused amount shall not be carried over to the following year.

9.2 SRP stored water shall be used only within the area depicted as the "Stored Water Area" (hereinafter "SWA") on the attached map (Exhibit "9.2") which is made a part of this Agreement. No less than 2,620 acres of agricultural land are located within the SWA, including not less than 1,320 acres which could have been irrigated with conventional methods and designated Class C lands under the Kent Decree.

9.3 Except as provided in Paragraph 9.6 hereof and except for limitations, if any, on the place of use of any water used by FMIC from its CAP contract, water from any source may be used within the SWA for any beneficial use.

9.4 The boundaries of the SWA shall in the future have the same force and effect upon the use of SRP stored water by FMIC as

the SRRD boundaries have on the use of SRP stored water by SRP shareholders.

9.5 An FMIC domestic water system is currently operating both within and without the SWA, using Kent Decree water. The system may be expanded in the future and may include commercial and industrial users. A domestic, municipal, or industrial water system may operate on the FMIC Reservation without regard to the border of the SWA, so long as an accounting is maintained of the water sources used by the entire system and of the quantity of water used both inside and outside the SWA. The accounting system must be adequate to demonstrate that no SRP stored water is used outside the SWA.

9.6 Two thousand (2,000) acre-feet of the SRP stored water provided in Paragraph 9.1 hereof shall be made available to FMIC by SRP only for non-agricultural uses solely within the SWA on lands having no prior history of agricultural irrigation.

9.7 SRP stored water is derived from the regulated yield of SRP's facilities. The maximum annual diversion right of 6,730 acre-feet of SRP stored water is a new demand on the SRP reservoir facilities. To accommodate SRP, FMIC agrees to a phase in of increased water demand from SRP as follows: the maximum delivery to FMIC of SRP stored water shall be 3,000 acre-feet in the first calendar year water is delivered under this Agreement, increasing by 1,000 acre-feet each calendar year thereafter, up to a maximum annual diversion right of 6,730 acre-feet. In each

year during the phase in period, the amount of SRP stored water made available to FMIC shall be apportioned, as between agricultural uses and non-agricultural uses, according to the following table:

Year 1	3000 AF x 0.7028 = 2108.4 AF	agricultural water
	3000 AF x 0.2972 = 891.6 AF	non-agricultural water
Year 2	4000 AF x 0.7028 = 2811.2 AF	agricultural water
	4000 AF x 0.2972 = 1188.8 AF	non-agricultural water
Year 3	5000 AF x 0.7028 = 3514.0 AF	agricultural water
	5000 AF x 0.2972 = 1486.0 AF	non-agricultural water
Year 4	6000 AF x 0.7028 = 4216.8 AF	agricultural water
	6000 AF x 0.2972 = 1783.2 AF	non-agricultural water
Year 5	6730 AF x 0.7028 = 4730.0 AF	agricultural water
	6730 AF x 0.2972 = 2000.0 AF	non-agricultural water

10.0 RWCD RIGHTS AND WATER TRANSFER TO FMIC

10.1(a) The parties to this Agreement ratify, confirm and declare to be valid that agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924, and all amendments and modifications thereto.

(b) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than FMIC, recognize and confirm the entitlement of RWCD to surface water from the Salt and Verde Rivers and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and

instruments: the agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about September 18, 1940, and judgment dated September 19, 1940, and the order dated September 19, 1940, in W.C. Lehane v. Salt River Valley Water Users' Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

10.2 The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than FMIC, recognize and confirm that the measure of RWCD's surface water entitlement under the documents and instruments identified in Paragraph 10.1 hereof is five and six-tenths percent (5.6%) of the sum of all surface water, except spill water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for use on the lands within the SRRD described in Exhibit "10.2" to this Agreement, (b) for distribution by Glendale, Mesa, Phoenix, Tempe and Chandler, or other cities, or towns, or their successors, to the lands within the SRRD listed on Exhibit "10.2" to this Agreement, and (c) all surface water delivered to SRP below Granite Reef Dam for use on the lands within the SRRD listed on Exhibit "10.2" to this Agreement in exchange for surface water which otherwise would have been diverted at Granite Reef Dam for delivery to such lands; minus the first 19,427 acre-feet of surface water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Paragraph 10.2, all rights and obligations contained in the

documents and instruments referred to in Paragraph 10.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this Paragraph shall not include any yield from increases in storage capacity resulting from modifications to Roosevelt Dam.

10.3 The parties to this Agreement recognize that Addendum A to the executed RWCD CAP agricultural water service subcontract differs in minor respects from the version of Addendum A included in section 10.3 of the SRPMIC Settlement Agreement, and that the Addendum A attached to the executed subcontract is intended to control. Such Addendum contains the language referenced in the Act to be included as Exhibit "10.3.2", and Exhibit "10.3.2" is no longer necessary. The parties to this Agreement also recognize that RWCD elected a zero percent (0%) Central Arizona Project agricultural water entitlement under its CAP agricultural water service subcontract pursuant to Exhibit 12.3 of the SRPMIC Settlement Agreement, subject to the rights of the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe and the Town of Gilbert under the assignment contained in Exhibit 12.3 of the SRPMIC Settlement Agreement. Nothing in this paragraph shall be construed to constitute a determination by CAWCD or the United States that RWCD continues to have any rights under the executed RWCD CAP agricultural water service subcontract.

10.4 Except as provided in Paragraph 7.4 hereof, during the term and extended term of the agreements referred to in Paragraph 10.1 hereof, RWCD hereby directs SRP to transfer to FMIC during

the nine month period beginning on January 1 and ending on September 30 of each calendar year up to 3,200 acre-feet of the credits accruing to RWCD under RWCD's entitlement as defined in Paragraph 10.2 hereof, provided that no more than 515 acre-feet of such credits may be transferred to FMIC in any month during such nine-month period. Any credits accruing to RWCD and not transferred to FMIC during any month may be used in that month or thereafter by RWCD, and any credits transferred to FMIC during any month which are not used by FMIC during that month shall be transferred back to RWCD at the beginning of the following month and shall not thereafter be available for use by FMIC. It is the intention of the parties hereto that FMIC's entitlement under this Paragraph 10.4 shall not be carried over from month-to-month nor have storage rights for annual carryover.

Subject to the foregoing limitations, sixteen percent (16%) of the credits accruing to RWCD under RWCD's entitlement as defined in Paragraph 10.2 hereof shall be transferred to FMIC by SRP as and when such credits accrue to RWCD during the period January 1 through September 30 of each year, and FMIC shall be entitled to divert 1.0526 acre-feet of water from the Verde River for each acre-foot of credit transferred by SRP to FMIC pursuant to this Paragraph 10.4. RWCD credits shall be considered as accrued for the purposes of this Paragraph 10.4 at the time credits are earned by RWCD under Paragraph 10.2 hereof, regardless of when the credits are added to RWCD's water account by SRP. FMIC diversions in any month shall not exceed the product obtained by multiplying the credits transferred to FMIC pursuant to this Paragraph 10.4 during that month by 1.0526 and

shall in no event exceed 542 acre-feet in any month nor a total of 3,368 acre-feet for the period between January 1 and September 30 of any year.

Subject to the monthly and annual limitations on accrual of credits and diversions set forth herein and in the SRPMIC Agreement; and subject further to RWCD's rights to use any credits which are not used by FMIC or SRPMIC respectively, RWCD shall direct and notify SRP to apportion 71.4% of the credits accruing to RWCD to SRPMIC and to apportion 28.6% of such credits to FMIC during any period between January 1 through September 30 in which it reasonably appears to FMIC, SRPMIC, and RWCD, prior to the commencement of such period, that 11,200 acre-feet or less will accrue to RWCD during such period by reason of drought. SRP shall continue to apportion the credits as provided in the preceding sentence until further notice to SRP by RWCD.

10.5 RWCD's direction for the delivery of water to FMIC pursuant to the terms of Paragraph 10.4 hereof shall be binding upon its successors and assigns. The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than FMIC, acknowledge that RWCD's water rights as described in the documents and instruments referred to in Paragraph 10.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to RWCD's entitlement, it shall assume RWCD's rights and obligations to FMIC under Paragraph 10.4 hereof. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

It is the purpose of Paragraphs 10.1, 10.2, and 10.4 hereof, and of this Paragraph 10.5, to describe RWCD's water right and the circumstances under which FMIC shall be entitled to the delivery of water from that water right. All parties to this Agreement recognize that the circumstances and arrangements pursuant to which water is delivered to RWCD may change over time, RWCD may cease to exist, or RWCD's successors may make different arrangements for the delivery of water to which these Paragraphs apply. Notwithstanding any such change of circumstances or arrangements, RWCD's ceasing to exist, or such different arrangements made by RWCD's successors, FMIC shall be entitled to continue receiving water pursuant to this Paragraph 10.0.

10.6 Neither SRP nor FMIC shall be charged any fees by RWCD for the performance of the obligations of this paragraph.

11.0 OTHER WATER

11.1 The Secretary shall make available to FMIC, at no cost to FMIC, the rights to 13,933 acre-feet of water from CAP water permanently relinquished by the Harquahala Valley Irrigation District ("HVID") under agreements among the Secretary, HVID, and CAWCD. The agreements among the Secretary, HVID, and CAWCD are attached as Exhibit "11.1" to this Agreement.

11.2 Pursuant to Section 406 of the Act, the Secretary shall convert the water to be made available to FMIC under

Paragraph 11.1 hereof from its original CAP agricultural priority to CAP Indian priority, or shall exchange the water described in Paragraph 11.1 with other CAP contractors or subcontractors in return for CAP water having a CAP M&I or CAP Indian priority. The Secretary shall make such water available to FMIC by means of an amendment or addendum to the existing CAP water delivery contract between the United States and FMIC dated December 11, 1980 ("FMIC CAP Delivery Contract"), as amended pursuant to the Act and Paragraph 20.1.6 hereof.

11.3 The water made available to FMIC under Paragraph 11.1 hereof, except for water which is leased by FMIC pursuant to Paragraph 20.0 hereof, will be delivered through the CAP aqueduct to SRP as exchange water under Paragraph 6.1.5 hereof at the direction and for the benefit of FMIC. SRP will accept delivery of FMIC's entitlement of water under this Paragraph 11.0 as exchange water entitling FMIC to a maximum annual diversion from the Verde River of 14,666 acre-feet, as provided in and in accordance with Paragraphs 6.1.5 and 7.1 and 7.2.2 hereof, and subject to the limitation of Paragraph 20.1.1 hereof.

11.4 The delivery of water through the CAP aqueduct to SRP from the exchange sources described in Paragraphs 11.0 and 12.0 hereof shall be subject to additional agreements therefor to be entered into among FMIC, the United States, CAWCD and SRP. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of CAP

water to SRP from the exchange sources described in Paragraphs 11.0 and 12.0 hereof shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation. FMIC shall pay all operation, maintenance and replacement ("OM&R") charges associated with the delivery of such water. Such charges shall be paid by FMIC to the United States or, at the Secretary's direction, to CAWCD. Nothing in this Paragraph 11.0 shall relieve FMIC or the United States on FMIC's behalf of any obligation that FMIC or the United States may have under the FMIC CAP Delivery Contract or the CAP Master Repayment Contract or that FMIC or the United States may assume in future agreements or contract amendments or that may be imposed on FMIC or the United States by court order to pay operation, maintenance and replacement charges of any type with respect to water described in Paragraphs 11.0 and 12.0 hereof.

12.0 FMIC CAP ALLOCATION

FMIC and the United States entered into a CAP Indian water delivery contract on December 11, 1980 which provides for the annual delivery of 4,300 acre-feet of CAP water to FMIC. SRP will accept delivery of FMIC's entitlement of CAP water as exchange water entitling FMIC to a maximum annual diversion right from the Verde River of 4,526 acre-feet as provided in Paragraphs 6.1.6, 7.1 and 7.2.2 hereof. In the event FMIC leases its entitlement of CAP water pursuant to Paragraph 20.0 hereof, FMIC's total maximum annual diversion right shall be reduced as provided in Paragraph 20.1.1 hereof.

13.0 VERDE RIVER SPILL WATER

The parties to this Agreement recognize that some of the parties have asserted appropriative claims to the flood flow waters of the Verde River in excess of the storage capacities of SRP reservoirs on that River (Verde River Spill Water). The FMIC Verde River Spill Water Claim is based upon the alleged actual diversion and beneficial use of Verde River Spill Water through and to the extent of the capacity of the FMIC transmission and distribution system at the time of those diversions. None of the parties to this Agreement shall, by reason of their execution and performance of this Agreement, be considered to have waived any of their respective claims or objections to claims of others to Verde River Spill Water or any appropriative claims or objections to claims of others to the flood flow waters of the Salt River in excess of the storage capacities of the existing SRP reservoirs on the Salt River.

14.0 SRP DELIVERY FEE

14.1 SRP stored water will be delivered to FMIC at 50% of the normal cost per acre-foot as determined on an annual basis by the Salt River Valley Water Users' Association's Board of Governors (approximately $5.00/acre-foot in 1992).

14.2 SRP will not charge any fee to FMIC for accepting exchange water or, except as provided in Paragraph 14.1 hereof, for filling the water order of FMIC for water from the sources

described in Paragraphs 6.1.1, 6.1.4, 6.1.5 and 6.1.6 hereof.

15.0 LIMITATIONS ON TRANSPORTATION AND USE OF FMIC WATER

Except as provided in Paragraph 20.0 hereof, the water made available to FMIC from the various sources under this Agreement is solely for use on the FMIC Reservation. The water made available to FMIC under this Agreement may be put to any beneficial use or reuse on the FMIC Reservation without restriction except to the extent restrictions are specifically set forth in this Agreement.

16.0 MINIMUM FLOW

16.1 SRP shall maintain a minimum flow in the Verde River below Bartlett Dam by releasing no less than 100 cubic feet per second of water (measured at the U.S.G.S. gauging station immediately below Bartlett Dam) from Bartlett Dam at all times, plus the amount of water necessary to satisfy any diversion between Bartlett Dam and the confluence of the Salt and Verde Rivers, including diversions by Rio Verde, FMIC and the City of Phoenix' infiltration gallery and pumps.

16.2 The minimum flow may be interrupted because of drought, for compliance with the provisions of Articles VIII and IX of the November 22, 1946 Agreement between the Salt River Valley Water Users' Association and the City of Phoenix, made necessary by maintenance, repair, and construction to facilities, or due to

accidents and emergencies. Where the minimum flow is interrupted for any of the reasons set forth in this Paragraph 16.2, other than due to accidents and emergencies, SRP shall give FMIC not less than two hours advance notice of such interruptions. Where the minimum flow must be interrupted due to an accident or emergency, no advance notice need be given.

16.3 The minimum flow described in Paragraph 16.1 hereof may also be interrupted prior to the completion of construction activities for modification of Roosevelt Dam as a part of the Plan 6 facilities any time the water surface elevation in Roosevelt Reservoir exceeds or is likely to exceed the target level established by the United States Bureau of Reclamation. Where the minimum flow is interrupted under these circumstances, SRP shall give FMIC six hours advance notice of such interruptions.

16.4 For the purposes of this Paragraph 16.0, drought shall be defined as any time that 1) daily total water storage in SRP reservoirs on both the Salt and Verde Rivers is less than 50 percent of normal for that month, and 2) daily total water storage in SRP reservoirs on the Verde River is less than 80,000 acre-feet during the period March through November or 60,000 acre-feet during the period December through February. Normal reservoir storage shall be defined as the median monthly storage level for the most recent 30 years.

17.0 VERDE RIVER DIVERSION WORKS

FMIC may divert for use on the FMIC Reservation any water to which it is entitled under this Agreement at any place within the Reservation or the lands identified in the FMIC's special permit extension application dated July 12, 1990 under which an easement was granted in perpetuity in Section 411(f) of the Act.

18.0 ENVIRONMENTAL COMPLIANCE

Environmental compliance shall be as set forth in Section 410 of the Act.

19.0 FMIC WAIVER OF CLAIMS

19.1 Except as provided in Paragraph 19.2 hereof, FMIC, on behalf of itself and its members and the Secretary on behalf of the United States, shall execute a waiver and release of:

(a) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation from time immemorial to the date of execution of such waiver and release, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona;

(b) Any and all future claims of rights to water

(including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation from and after the date of execution of such waiver and release, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(c) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the FMIC Reservation based upon aboriginal occupancy by the Indians of the Fort McDowell Indian Community, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

The waiver and release will be in the form set out in Exhibit "19.1" to this Agreement.

19.2 Notwithstanding the execution by FMIC of the waiver and release described in Paragraph 19.1 hereof, FMIC, its members, and the United States on their behalf, shall retain the right to assert the following claims:

(a) Claims for the enforcement of FMIC's water rights as provided for in this Agreement, including rights based on the

Kent Decree under the continuing jurisdiction of the Court in the Gila River Adjudication.

(b) Claims against any person for the breach or enforcement of the terms of this Agreement or rights recognized herein.

(c) FMIC and or the United States on behalf of FMIC may assert a claim to Verde River Spill Water in the Gila River Adjudication as provided in Paragraph 13 hereof.

19.3 Any entitlement to water of any individual member of the FMIC for lands within the FMIC Reservation shall be satisfied out of the water resources provided to FMIC in this Agreement.

19.4 Except as provided in Paragraph 19.2 of this Agreement, the United States shall not assert any claim against the State of Arizona and any agency or political subdivision thereof or any other person, corporation, or municipal corporation, in its own right or on behalf of FMIC and its members based upon (1) water rights or injuries to water rights of FMIC and its members; or (2) water rights or injuries to water rights held by the United States on behalf of FMIC and its members.

19.5 The parties shall file a stipulation and form of judgment in the Gila River Adjudication in the form of Exhibit "19.5" hereto. The United States or FMIC shall be permitted to support any claim of any party to this Agreement filed in the Gila River Adjudication from which FMIC's water rights under this Agreement are derived.

19.6 The United States and FMIC shall dismiss with prejudice all water-related litigation pending in Federal or State courts in which FMIC is a plaintiff or which has been brought by the United States on behalf of FMIC. The dismissals shall be in the forms set out in Exhibits 19.6.1, 19.6.2, and 19.6.3.

19.7 The United States and FMIC waive their sovereign immunity from suit in Federal District Court in regard to any claim which relates to the interpretation or enforcement of the Act or of this Agreement.

19.8 Nothing herein shall prevent FMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley.

20.0 LEASING OF WATER

20.1 Except as otherwise provided in Section 407 of the Act, FMIC may, with the approval of the Secretary, lease water provided to FMIC under Paragraphs 11.0 and 12.0 hereof, for its fair market value for a term not to exceed 100 years for use and reuse in Pima, Pinal, or Maricopa counties, State of Arizona.

Except as authorized in this Paragraph 20.0, no water made available to FMIC or its members pursuant to this Agreement or the Act may be sold, leased, transferred, or in any way used or reused off FMIC's Reservation.

20.1.1 FMIC's total maximum annual diversion right as provided

in Paragraphs 5.0, 6.0, and 7.0 hereof and specifically the maximum annual diversion rights described in Paragraphs 6.1.5 and 6.1.6 hereof shall be reduced by the amount of water made available to FMIC under Paragraphs 11.0 and 12.0 hereof which is leased by FMIC for uses outside the FMIC reservation, multiplied by a factor of 1.0526, during the term of such lease.

20.1.2 For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of CAP water described in Paragraphs 11.0 and 12.0 hereof and leased by FMIC shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

20.1.3 The lease by FMIC of the CAP water described in Paragraph 11.0 hereof shall not obligate the Lessee or FMIC to pay CAP water service capital charges with respect to such water. The Lessee shall pay full operation, maintenance and replacement costs of such water to the United States, or, at the Secretary's discretion, directly to CAWCD. The lease of any such water pursuant to Paragraph 20.1 hereof shall be evidenced by Project Water Lease Agreements among FMIC, the Secretary and the Lessee(s). If the Lessee is a CAP M&I subcontractor at the time of the lease, such Project Water Lease Agreement shall, unless otherwise agreed among FMIC, the Secretary, CAWCD, and the Lessee, include the terms and conditions specified in Exhibit "20.1.3" hereto. If the Lessee is not a CAP M&I subcontractor at the time of the lease, CAWCD shall be a party to the lease, and

the lease shall contain such terms and conditions as are agreed upon among FMIC, the Secretary, CAWCD, and the Lessee.

20.1.4 FMIC shall direct the Secretary to deliver its water described in Paragraphs 11.0 and 12.0 hereof to the Lessee(s) in accordance with each Lessee's entitlement to such water under a Project Water Lease Agreement authorized by this Paragraph 20.0; provided, however, that neither the Secretary nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to a Lessee would limit deliveries of CAP water to other CAP subcontractors to a degree greater than would deliveries of CAP water to SRP.

20.1.5 In the settlement of all of the issues resolved in this Agreement, the Lessee(s) and FMIC have assumed that the CAP water acquired by the United States pursuant to Paragraph 11.0 hereof and the CAP water identified in Paragraph 12.0 hereof are a federal resource which would not be subject to taxation. Although it is the understanding and intent of the Lessee(s) and FMIC that such water is not subject to taxation in the first instance, to the extent that any such taxation right or power may exist, the Lessee(s) and FMIC each agree to refrain from imposing any tax on the Lease Agreement(s), or such water, or any tax measured by the value of such water to be delivered under this Agreement, or the transportation of CAP water under this Agreement and each expressly waives any right it may have to levy any such tax.

20.1.6 The Secretary and FMIC shall amend their contract dated December 11, 1980 ("the Contract"), for the delivery of 4,300 acre-feet of CAP water (a) to extend the Contract term through December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof, and (b) to authorize the FMIC to lease that 4,300 acre-feet CAP entitlement for a term of 99 years from January 1, 2001, provided that the Secretary shall be a party to any contract or lease. The amendment shall be in the form of Exhibit "20.1.6" to this Agreement, which Exhibit "20.1.6" is erroneously referred to in the Act as Exhibit "20.2.1".

20.1.7 FMIC shall lease all right, title and interest it has under the Contract to 4,300 acre-feet of CAP water to the City of Phoenix for a term of 99 years beginning January 1, 2001. The lease shall be evidenced by the Project Water Lease Agreement attached as Exhibit "20.1.7" to this Agreement, which Exhibit "20.1.7" is erroneously referred to in the Act as Exhibit "20.2.2". Phoenix shall pay a consideration in the amount and manner set out in Exhibit "20.1.7".

21.0 COST SHARING RESPONSIBILITIES

21.1 The FMIC is developing and improving those agricultural lands which could have or should have been developed historically. Approximately 900 acres have been developed to date. Future development will consist of approximately 3,000

additional acres of irrigated lands. Additional development may be in the form of adequate diversion works, or suitable alternative, capable of delivering the full diversion right to the FMIC; a main canal extension; siphons and laterals; related equipment and facilities; a comprehensive water and land use study; as well as subjugation of additional lands. The FMIC is also planning non-agricultural development on the Reservation.

21.2 The parties have agreed that the direct cost of this Agreement includes, $38 million for land development facilities and $36 million for the value of the local Salt and Verde River water contributed to FMIC.

21.3 FMIC will contribute $1 million toward the direct costs. The parties agree to support a request of the Executive Branch of the United States to the Congress for the appropriations to fund the United States' contribution and to support a similar request of the Governor to the Arizona State legislature for the Arizona contribution as shown below:

DIRECT CONTRIBUTIONS TO COSTS:

<u>Local Contributions</u>		
Local Water	$36.0	million (in kind)
State of Arizona	2.0	million
Marketing		
-City of Phoenix	5.0	million
-Other	---	
FMIC	1.0	million
	$44.0	million (55%)
<u>U.S. Contribution</u>:	$36.0	million (45%)

21.4 There will be created a fund, known as the Fort McDowell Indian Community Development Fund, to be used for agricultural and other development. Contributions to the development fund shall be made as follows:

Marketing		
-City of Phoenix	$ 5.0	million
-Other	---	
State of Arizona	2.0	million
FMIC	1.0	million
United States	23.0	million

22.0 OTHER PROVISIONS

22.1 Disclaimer - Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian water claims in any judicial or administrative proceeding.

22.2 Evidentiary Effect of Negotiations - This Agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

22.3 Effect of Execution by State of Arizona - Execution of this Agreement by the State of Arizona constitutes the

confirmation that it is the policy of the State of Arizona to assist in carrying out the provisions hereof to the extent it may do so in accordance with its responsibility and authority under the law. It is not intended that this Agreement shall be determinative of the action to be taken by any state agency in any adjudicatory or rule making proceeding. Nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its trust lands under the Enabling Act.

22.4 Water Delivery During Plan 6 Construction - The parties to this Agreement recognize that there may be interim water supply shortages during Plan 6 construction and refilling, other provisions of this Agreement notwithstanding. The FMIC agrees to accept during that construction and refilling period shortages in water supply that are of the same relative magnitude as shortages accepted by other Salt and Verde River water users. Details of water supply and shortage during construction and refilling will be agreed to in advance of construction.

22.5 Enforceability Date and Related Matters

22.5.1 This Agreement shall be effective and binding when it has been executed by all parties hereto and when the parties to this Agreement have executed all Exhibits to the Agreement which call for their signatures. Other than to take all steps necessary to cause the events described in this Paragraph 22.5.1 hereof to occur, no party to the Agreement shall be required to perform any of the obligations, or be entitled to

receive any of the benefits, under the Agreement or under any of the Exhibits until such time as the authorization in Section 409(b) of the Act has become effective (the "enforceability date").

In the event the authorization in Section 409(b) of the Act has not become effective by the date indicated in Section 412(b) of the Act, this Agreement shall be of no further force or effect.

22.5.2 Exhibit 2.1 is the Act of Congress which authorizes the federal action required to carry out this Agreement. Any Act of Congress which materially amends the Act set forth in Exhibit 2.1 hereto prior to the enforceability date of this Agreement without the written consent of the parties adversely affected by the amendment shall relieve all parties to this Agreement of their obligations hereunder.

22.5.3 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "19.5" and no further appeal may be taken, the parties to this Agreement shall:

(a) Perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction; and

(b) Permit FMIC and its members, and the United

States on their behalf, to assert in the Gila River Adjudication claims for water rights to the waters of the Gila River System and Source in addition to the 36,350 acre-feet of water available as a total maximum annual diversion right to FMIC under this Agreement, and the other parties to this Agreement agree not to assert any defense to such claims against FMIC and the United States, including, inter alia: (1) That FMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of FMIC; and (2) That the practicably irrigable acreage standard set forth in Arizona v. California does not apply to the FMIC Reservation; however, FMIC and the United States agree that a reserved right up to 36,350 acre-feet will be satisfied as provided in the Agreement, and that if a right in excess of 36,350 acre-feet is awarded, the excess of such right will not be exercised, in any phase of the Gila River Adjudication or any subsequent proceedings, against junior rights to the waters of the Gila River System and Source held by other parties to this Agreement and the water rights appurtenant to shareholder lands within the SRRD.

22.5.4 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "19.5"

hereto, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered any single party to this Agreement not to perform an obligation to deliver water to FMIC as provided in this Agreement,

(a) All other parties to this Agreement shall perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction;

(b) The party ordered not to perform an obligation to deliver water to FMIC as provided in this Agreement shall perform all of its remaining obligations, if any, under this Agreement; that party shall be relieved of its obligations under this Agreement only to the extent necessary to comply with the Court's Order; and

(c) FMIC and its members, and the United States on their behalf, may assert in the Gila River Adjudication claims for water rights to the waters of the Gila River System and Source in addition to the 36,350 acre-feet of water available as a total maximum annual diversion right to FMIC under this Agreement, and the other parties to this Agreement agree not to assert any defenses to such claims against FMIC and the United States, including inter alia: (1) That FMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of FMIC; and (2) That the practicably irrigable

acreage standard set forth in Arizona v. California does not apply to the FMIC Reservation; however, FMIC and the United States agree that a reserved right up to 36,350 acre-feet will be satisfied as provided in the Agreement, to the extent not precluded by an order of a court of competent jurisdiction as provided in this Paragraph 22.5.4, and that if a right in excess of 36,350 acre-feet is awarded, the excess of such right and the amount of any FMIC right under the Agreement which has been enjoined as provided in this Paragraph 22.5.4. will not be exercised, in any phase of the Gila River Adjudication or in any subsequent proceedings, against junior rights to the waters of the Gila River System and Source held by other parties to this Agreement and the water rights appurtenant to shareholder lands within the SRRD.

22.5.5 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "19.5" hereto, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered more than one of the parties to this Agreement not to perform an obligation to deliver water to FMIC as provided in this Agreement, then, unless otherwise agreed by FMIC, this Agreement shall be null and void and, except as provided in Paragraph 19.7 hereof and in this Paragraph 22.5.5, all parties shall be relieved of their

obligations under this Agreement. All funds appropriated pursuant to Section 408 of the Act which have not been expended by FMIC shall revert to the Treasury of the United States and any funds appropriated by the State of Arizona pursuant to Paragraph 21.3 of this Agreement which have not been expended by FMIC shall revert to the State of Arizona. If FMIC has expended some of the funds appropriated by the United States and the State, the remaining funds shall be apportioned between the United States and the State in proportion to their respective contributions to the FMIC Development Fund pursuant to these Sections of the Act and the Agreement. Within 180 days of this Paragraph 22.5.5 taking effect, FMIC shall also reimburse the City of Phoenix for any and all sums paid by the City of Phoenix to FMIC as consideration for any lease of water pursuant to Paragraph 20.0 hereof, together with interest thereon from the date of each payment by the City of Phoenix to the date of reimbursement of each sum by FMIC, calculated for each year's interest at a rate 3% over that for United States Treasury Bills in effect for each year from the date of payment through the date of reimbursement; provided, however, that if this Paragraph 22.5.5 shall take effect after January 1, 2001, the amount of any such reimbursement shall be reduced pro rata to reflect the number of years after January 1, 2001, that any such lease was actually in effect.

22.6 Uses - All parties to this Agreement recognize that water uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural

uses to municipal and industrial uses. The parties agree that such changes in use are valid, and that water appurtenant to lands which are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I uses on such urbanized lands and the water rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of use, these water rights are as described in the Kent Decree, the Lehane decision (W.C. Lehane v. Salt River Valley Water Users' Assoc., et al., Cause No. 32021-C) and Paragraphs 22.7 and 10.1 hereof and the documents referred to therein. No party to this Agreement shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the parties agree that the historical practices of the Cities and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached hereto as Exhibit "22.6". Nothing in this Paragraph 22.6 shall be construed as authorizing the delivery of water to any municipality by SRP for M&I uses within the SRRD in the absence of a written delivery agreement between any such municipality and SRP. The term "party" or "parties" as used in this Paragraph 22.6 means all parties to this Agreement except for the United States acting as trustee for Indian tribes other than FMIC.

22.7 Confirmation of Rights

22.7(a) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than FMIC, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, the rights of the City of Phoenix in the waters of the Salt and Verde Rivers, which rights are described, stated, confirmed or established in the following documents:

(1) Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.

(2) Contract No. 1604 between the Salt River Valley Water Users Association and The City of Phoenix dated November 22, 1946, to the extent that Contract No. 1604 is in accordance with and consistent with Contract No. 1830 described in Paragraph 22.7(a)(1) hereof.

(3) Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

22.7(b) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than FMIC, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or otherwise, the rights of SRP and its shareholders to the waters of the Salt and Verde Rivers, which rights are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

(1) Notices of appropriation of water posted and subsequently recorded by the Hudson Reservoir and Canal Company on April 22, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 1 at Pages 478 to 480; on April 25, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 283-285; on April 29, 1893, with the Yuma County, Arizona, Recorder's Office in Book of Homestead and Pre-emption Claims No. 1 at Pages 76-78; on May 1, 1893, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 8-13; on August 26, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 310-312; on August 26, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 1 at Pages 534-538; on February 1, 1894, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 53-57; on August 30, 1901, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 2 at Pages 292-293; on August 31, 1901, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at Pages 74-76; on August 31, 1901, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 191-195; on August 31, 1901, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and

Locations No. 2 at Pages 239-242; on February 26, 1900, in the Office of the Secretary of the Arizona Territory in Book of Filings and Locations No. 2 at Pages 131-133; on March 3, 1900, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 154-157.

(2) Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

(3) Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

(4) Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

(5) Decision and Decree, and all Decrees supplemental thereto, entered in Hurley v. Abbott, In the District Court of The Third Judicial District of The Territory of Arizona, In and For The County of Maricopa, No. 4564, March 1, 1910.

(6) Decision and Decree, and all supplemental Decrees thereto, entered in Benson v. Allison, in the

Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast 1/4 of Section 25, Township 1 North, Range 1 East, G&SRB&M.

(7) Salt River Valley Water Users' Association Articles of Incorporation, as amended, in existence on the effective date of the Agreement.

(8) Water Right applications approved and accepted by authority of the Secretary of Interior for Homestead Lands Under the Reclamation Act and for Lands in Private Ownership and Lands Other than Homesteads Under the Reclamation Act between The United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

(9) Agreement between the United States of America and Salt River Valley Water Users' Association, dated June 25, 1904.

(10) Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.

(11) Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).

(12) Contract between the United States of America and Salt River Valley Water Users' Association, dated

November 26, 1935, as amended on October 14, 1936, October 2, 1939 and September 10, 1941 (Construction of Bartlett Dam).

(13) Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

(14) Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam Construction and Operation).

22.7(c) The parties confirm and agree to support in the Gila River Adjudication a priority date for FMIC's Kent Decree water right of 390 miners' inches (equivalent to 9.75 cubic feet per second or 7060 acre-feet per year if diverted or stored year round) that pre-dates the first non-Indian priority date therein, but in no event shall the FMIC Kent Decree priority date be later than September 15, 1903. The parties further agree to employ their best efforts in obtaining court approval of the stipulations including the provision regarding priority date of FMIC's Kent Decree water right. In the event the court decrees a priority date later that September 15, 1903 for FMIC's Kent Decree water right, either in a partial judgment following review of the settlement or in a final decree, FMIC shall have the option within sixty (60) days thereafter of voiding this Agreement and all stipulations, contracts, and other actions

taken pursuant thereto.

22.7(d) The parties recognize and acknowledge that the water rights acquired by FMIC or confirmed hereunder are not subject to forfeiture or abandonment due to non-use by FMIC or its lessee(s). The parties agree not to assert the defenses of forfeiture, abandonment due to non-use or like defenses based upon the passage of time against FMIC, the United States or anyone leasing water from FMIC under Paragraph 20.0 hereof.

22.8 Order of Spill - The FMIC storage entitlements shall spill in the following order: 1) RWCD credits provided pursuant to Paragraph 10.4 hereof; 2) Kent Decree water stored pursuant to Paragraph 8.1 hereof; 3) Exchange Water credits provided pursuant to Paragraph 7.2.2 hereof. The FMIC storage entitlement credits shall spill from Bartlett Dam on the Verde River before the storage entitlements provided in the SRPMIC Settlement Agreement dated as of February 12, 1988. All other storage entitlements in SRP reservoirs on the Verde River shall spill after the storage entitlements described in this Paragraph 22.8.

22.9 Rights Held in Trust - The water rights of FMIC hereunder are acquired in trust by the United States for the benefit of FMIC to be held as other Indian rights are held.

22.10 Succession - This Agreement shall inure to the benefit of and be binding upon the successors of the parties hereto.

22.11 Effect on the Allocation or Reallocation of CAP Supplies - The Secretary and the State of Arizona recognize and agree that the water made available to cities pursuant to this Agreement shall constitute water resources received by such cities in replacement of existing water resources and in good faith settlement of litigation of FMIC water claims. The receipt of or entitlement to water from these sources shall not be counted in any allocation or reallocation of the CAP supply.

22.12 Destruction of Facilities - Several of the sources of water described in Paragraph 6.1 hereof are dependent upon the existence of conservation and storage facilities, as well as transmission facilities, to deliver such water to FMIC. The destruction of any of these facilities by any cause shall not permanently extinguish FMIC's right to receive water otherwise made available by the affected facility; however, such destruction may relieve the parties of the obligation to deliver such water to FMIC until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the principal parties in interest as hereinafter provided. Any party responsible for repairing or replacing an affected facility under other contractual arrangements shall have that same obligation under this Agreement. In the event no party has such an obligation, all of the parties, including the United States, shall use all reasonable efforts to provide a permanent equitable substitute source for the affected water supply in a manner consistent with the parties' respective obligations under this Agreement. This Paragraph 22.12 shall not apply to CAWCD.

22.13 Participation of CAWCD. The parties acknowledge that CAWCD's participation in this Agreement is based upon the Statement of Policies and Principles adopted by its Board of Directors on March 3, 1988, a copy of which is attached hereto as Exhibit "22.13."

22.14 Contingent on Appropriation of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation of funds therefor. No liability shall accrue to the United States in case funds are not appropriated.

22.15 Officials Not to Benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

22.16 Miscellaneous Provisions

22.16.a Counterparts - This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

22.16.b Notices - Any notice to be given hereunder shall have been properly given when received by the officer or manager designated herein, or when deposited in the United States

mail in an Arizona or Washington, D.C. post office, certified or registered, postage prepaid, addressed as follows:

United States of America:	Secretary of the Interior Department of the Interior Washington, D.C. 20240
	Area Director Phoenix Area Office Bureau of Indian Affairs PO Box 10 Phoenix, AZ 85001
	Regional Director Bureau of Reclamation Lower Colorado Region PO Box 61470 Boulder City, NV 89006-1470
As to the State of Arizona:	Office of the Governor 1700 West Washington Phoenix, AZ 85007
As to FMIC:	Fort McDowell Indian Community P.O. Box 17779 Fountain Hills, AZ 85269-7779 Attn: President
As to the CAWCD:	Central Arizona Water Conservation District 23636 North Seventh Street Phoenix, AZ 85024 Attn: General Manager
As to the SRP:	Salt River Project PO Box 52025 Phoenix, AZ 85072-2025 Attn: General Manager
As to the RWCD:	Roosevelt Water Conservation District PO Box 100 Higley, AZ 85236 Attn: General Manager
As to the City of Phoenix:	City of Phoenix 251 West Washington Phoenix, AZ 85003 Attn: City Manager

As to the City of Scottsdale:	City of Scottsdale 3939 Civic Center Plaza Scottsdale, AZ 85251 Attn: City Manager
As to the City of Glendale:	City of Glendale 5850 West Glendale Avenue Glendale, AZ 85301 Attn: City Manager
As to the City of Mesa:	City of Mesa 55 North Center Street PO Box 1466 Mesa, AZ 85201 Attn: City Manager
As to the City of Tempe:	City of Tempe 31 East 5th Street Tempe, AZ 85281 Attn: City Manager
As to the City of Chandler:	City of Chandler 25 South Arizona Place Chandler, AZ 85225 Attn: City Manager
As to the Town of Gilbert:	Town of Gilbert 1025 South Gilbert Road Gilbert, AZ 85234 Attn: Town Manager

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this Paragraph 22.16.b.

IN WITNESS WHEREOF, the parties have executed this Agreement dated as of the day and year first above written.

23.0 SIGNATURE BLOCK

THE UNITED STATES OF AMERICA

By: _____
Secretary of the Interior

STATE OF ARIZONA

Attest: _____ By: _____
Sec. of State Governor

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____ By: _____
Secretary President

Approved as to Form: _____
General Counsel

FORT MCDOWELL INDIAN COMMUNITY

Attest: _____ By: _____
Secretary President

Approved as to Form: _____

SALT RIVER VALLEY WATER USERS' ASSOC.

Attest: _____ By: _____
Its Secretary Its President

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest: _____ By: _____
Its Secretary Its President

ROOSEVELT WATER CONS. DISTRICT

Attest: _____ By: _____
Its _____ President

Approved as to Form: _____

CITY OF PHOENIX, Frank Fairbanks, City Manager

Attest: _____ By: _____
City Clerk

Approved as to Form: _____ _____
Acting City Attorney Mayor, City of Phoenix

CITY OF SCOTTSDALE

Attest: _____ By: _____
Clerk Mayor

Approved as to Form: _____
for City Attorney

CITY OF GLENDALE

Attest: _____ By: _____
Clerk Mayor

Approved as to Form: _____
City Attorney

CITY OF MESA

Attest: _____ By: _____
Clerk Mayor ~~Mayor~~ City Manager

Approved as to Form: _____
City Attorney

CITY OF TEMPE

Attest: _____ By: _____
Clerk Mayor

Approved as to Form: _____
City Attorney

CITY OF CHANDLER

Attest: _____ By: _____
Acting Clerk Mayor

Approved as to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____ By: _____
Clerk 2/12/93 Acting Mayor

Approved as to Form: _____
City Attorney

01/13/93
FMICFNL\FMAGMT.23

FMIC EXHIBIT 2.1

SETTLEMENT ACT

PUBLIC LAW 101-628 [H.R. 2570]; November 28, 1990

ARIZONA DESERT WILDERNESS ACT OF 1990, ETC.

An Act to provide for the designation of certain public lands as wilderness in the State of Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990".

Arizona Desert Wilderness Act of 1990.
16 USC 460ddd note.

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

National Wilderness Preservation System.
16 USC 1132 note.

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: *Provided,* That the existing water pipeline for the town of Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and

refuge, consistent with management of the refuge for the purpose for which such refuge was established, and in accordance with laws applicable to the National Wildlife Refuge System.

SEC. 302. NO EFFECT ON UPPER BASIN.

Nothing in titles I, II, or III of this Act shall amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty pertaining to the Colorado River (including its tributaries) in the Upper Basin, including, but not limited to, the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

Fort McDowell Indian Community Water Rights Settlement Act of 1990.
Government contracts.
Claims.

TITLE IV—FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SECTION 401. SHORT TITLE.

This title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

SEC. 402. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various Federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability

of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 403. DEFINITIONS.

For purposes of this Act—

(a) "Agreement" means that agreement among the Fort McDowell Indian Community, the State of Arizona, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 404. KENT DECREE REREGULATION.

(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 409(b) of this Act become effective, for the utilization of up to three thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1.

SEC. 405. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to

include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement.

SEC. 406. OTHER WATER.

(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

HARQUAHALA VALLEY IRRIGATION DISTRICT

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID

CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing Federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

VERDE RIVER WATERSHED

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construc-

tion of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

Public information.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed $800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to this subsection (c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the aug-

mentation of the Verde River will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided,* That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community. The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pursuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant to this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred

and eighty days after the enactment of this Act and shall be completed within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed $30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the construction or diversion, collection, and conveyance facilities shall be adjusted by such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

(l) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section. Appropriation authorization.

SEC. 407. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to

be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 406 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 406 of this Act is CAP water, the provisions of subsections of (a), (b), (c), (d), and (e) of this section 407 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section (406)(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation.

SEC. 408. FORT McDOWELL INDIAN COMMUNITY DEVELOPMENT FUND: LOAN.

(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, $2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average market yield on outstanding Federal obligations of comparable maturity, $23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation. Appropriation authorization.

(c) As of the date the authorizations contained in section 409(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this title: *Provided,* That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 409(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044, 43 U.S.C. 422a, as amended), in the amount of $13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided,* That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall deposit $1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation.

SEC. 409. SATISFACTION OF CLAIMS.

(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations

under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 412(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 410. ENVIRONMENTAL COMPLIANCE.

(a) Execution of the settlement Agreement by the Secretary as provided for in section 411(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

Appropriation authorization.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other applicable environmental acts and regulations in proceeding through the implementation phase of this settlement: *Provided, however,* That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 408(e).

SEC. 411. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the

interpretation or enforcement of this title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 409(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. 1522(a)) shall no longer apply to the Community. 43 USC 1522 note.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 409(b) of this Act and in section 10(b) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act (102 Stat. 2549) become effective, subsection 404(a) of this Act shall become effective as to the Salt River Pima-Maricopa Indian Community and the United States. Effective date.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991." 102 Stat. 2553.

SEC. 412. EFFECTIVE DATE.

(a) The authorizations contained in section 409(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that: Federal Register, publication.

(1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 404;

(2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 405(b);

(3) the Secretary has acquired water pursuant to section 406 and made it available for delivery for the benefit of the Community;

(4) the funds authorized by section 408(b) have been appropriated and deposited into the Community Development Fund;

(5) the loan authorized by section 408(e) has been provided to the Community;

(6) the State of Arizona has appropriated and deposited into the Community Development Fund the $2,000,000 required by paragraph 21.4 of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 407, 408(a), 408(b), 408(e), 409(b), 409(c), 411(a), 411(b), 411(c), 411(d), 411(e) and 411(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 408(b) of this Act shall revert to the Treasury, and any funds appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona.

SEC. 413. OTHER CLAIMS.

Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

Natural resources.

TITLE V—NATIONAL PARK SYSTEM UNITS IN TEXAS

SEC. 501. EXPANSION OF SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK.

(a) EXPANSION.—Section 201(a) of the Act entitled "An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and other purposes" (16 U.S.C. 410ee(a)) is amended by inserting after the first sentence the following: "The park shall also consist of the lands and interests therein within the area bounded by the line depicted as 'Proposed Boundary Extension' on the maps entitled 'San Antonio Missions National Historical Park', numbered 472-80,075, 472-80,076, 472-80,077, 472-80,078, 472-80,079, 472-80,080, and 472-80,081 and dated June 7, 1990, which shall be on file and available for public inspection in the same manner as is such drawing.".

(b) DEVELOPMENT OF ESSENTIAL PUBLIC FACILITIES.—Section 201(f)(2) of such Act is amended by striking "not more than $500,000." and inserting "not more than $15,000,000.".

16 USC 460eee.

SEC. 502. LAKE MEREDITH NATIONAL RECREATION AREA

(a) ESTABLISHMENT.—In order to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters, there is hereby established the Lake Meredith National Recreation Area (hereafter in this Act referred to as the "recreation area").

(b) AREA INCLUDED.—The recreation area shall consist of the lands, waters, and interests therein within the area generally depicted on the map entitled "Lake Meredith National Recreation Area Boundary Map, 'Fee-Take Line'", numbered SWRO—80,023-A,

FMIC EXHIBIT 2.8

MAP OF FMIC RESERVATION

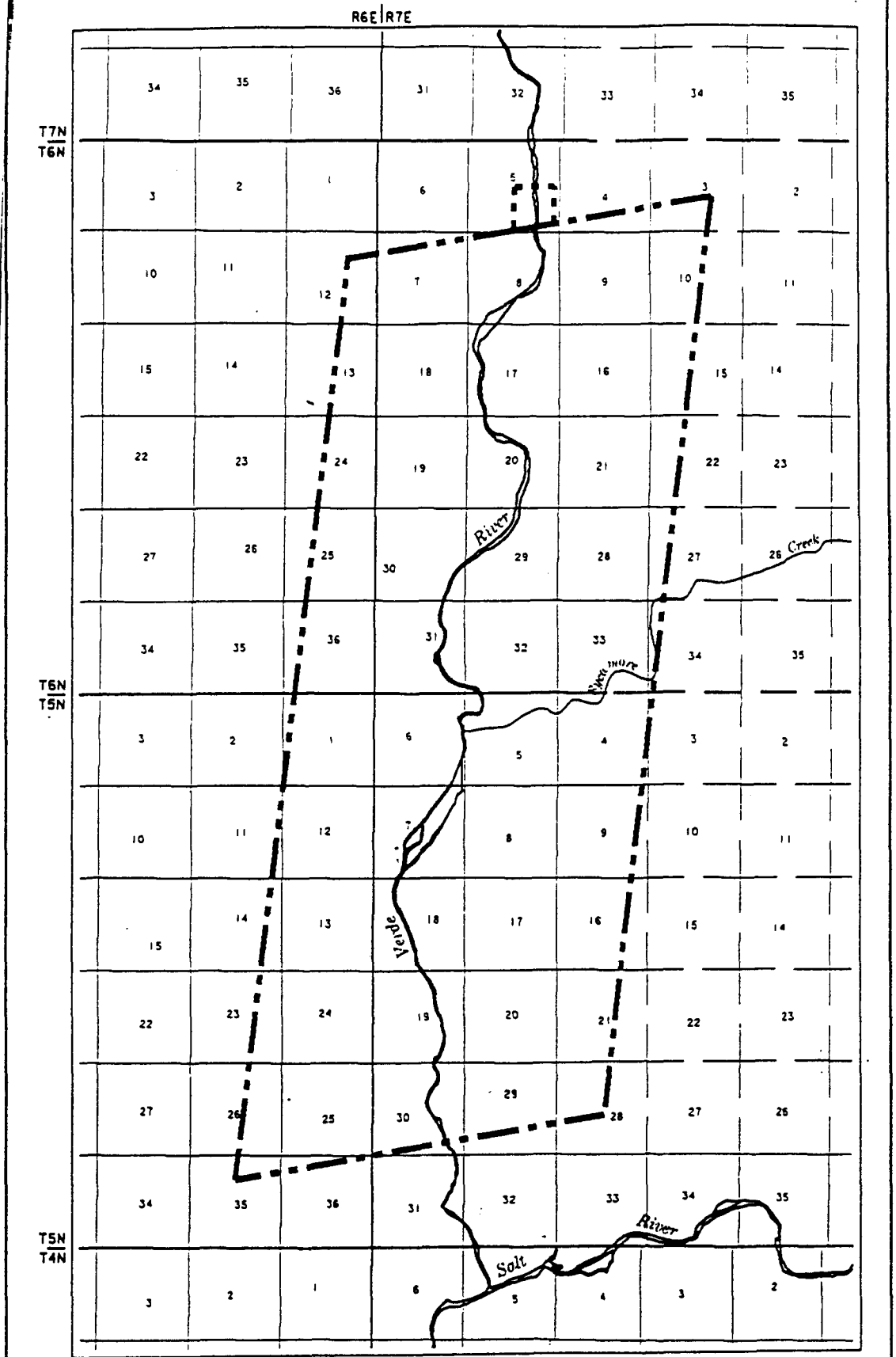


Exhibit 2.8

WTR:[145,201]FTOHIST2.DGN

FMIC EXHIBIT 8.1

BARTLETT DAM AGREEMENT AMENDMENT

AN AMENDMENT TO THE AGREEMENT BETWEEN THE UNITED STATES AND THE SALT RIVER VALLEY WATER USERS' ASSOCIATION CONCERNING VERDE RIVER STORAGE WORKS IMPLEMENTING THE FORT MCDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 1990

This Amendment, made this ___ day of _____, 1993, to the Agreement between the United States of America and the Salt River Valley Water Users' Association, a corporation organized and existing under the laws of the Territory, now the State, of Arizona, dated June 3, 1935, is between the United States of America, herein after referred to as the "United States," the Salt River Valley Water Users' Association, hereinafter referred to as the "Association," and the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, hereinafter referred to as the "District." The Association and the District are hereinafter jointly referred to as the "Salt River Project."

WITNESSETH:

WHEREAS, the United States and the Association entered into an Agreement, dated June 3, 1935, for the construction, operation and maintenance of Bartlett Dam on the Verde River, hereinafter referred to as the "Bartlett Dam Agreement;" and

WHEREAS, the Bartlett Dam Agreement allots 20% of all developed water, as defined and further limited in that Agreement, to the United States for and on behalf of the Salt River Pima-Maricopa Indian Community, hereinafter referred to as "SRPMIC," and 80% of all developed water to the Association;

and

WHEREAS, the Association, Phelps Dodge Corporation, a corporation organized under the laws of the State of New York and duly authorized to conduct business in the State of Arizona, the Defense Plant Corporation, a corporation created by the Reconstruction Finance Corporation pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, entered into an Agreement dated March 1, 1944, for the construction, operation and maintenance of Horseshoe Dam on the Verde River, hereinafter referred to as the "Horseshoe Dam Agreement;" and

WHEREAS, the rights and obligations of the Association under the Bartlett Dam Agreement and the Horseshoe Dam Agreement were transferred to and assumed by the District pursuant to a contract between the Association and the District dated March 22, 1937, and the amendments thereto date February 28, 1944, and September 12, 1949; and

WHEREAS, the United States and the Salt River Project, pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Public L. No. 100-512, 102 Stat. 2549, amended the Bartlett Dam Agreement in an Amendment executed on the 1st day of January, 1989; and

WHEREAS, the United States, the Fort McDowell Indian Community, hereinafter referred to as "FMIC," the State of Arizona, the Central Arizona Water Conservation District, the Salt River Project, the Roosevelt Water Conservation District, and the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa,

Tempe and Chandler and the Town of Gilbert have agreed through the Fort McDowell Indian Community Water Rights Settlement Agreement, dated as of _____, 1993, hereinafter referred to as the "Settlement Agreement," to settle once and for always the water rights of FMIC and its members; and

WHEREAS, the Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub.L. No. 101-628, Title IV, 104 Stat. 4480 (1990), approves the Settlement Agreement and directs the United States, acting through the Secretary of the Interior, to amend the Bartlett Dam Agreement as provided in the Act and the Settlement Agreement;

NOW, THEREFORE, in consideration of the premises and the promises and agreements hereinafter set forth, it is agreed as follows:

1. A new Article 16 shall be added to the Bartlett Dam Agreement, providing as follows:

Article 16

STORAGE OF WATER FOR THE FORT MCDOWELL INDIAN COMMUNITY

Notwithstanding anything to the contrary in the Bartlett and Horseshoe Dam Agreements as amended prior hereto, the United States and the Salt River Project shall make available up to three thousand (3,000) acre-feet of the existing storage space of the United States and the Salt River Project behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Fort McDowell Indian Community's rights to water under the Kent Decree. This storage space shall be for

seasonal regulation only, with no annual carryover past September 30 of any year.

The Salt River Project shall establish during the term of this amendment a water storage account to be known as the FMIC Kent Decree Storage Account. This Account shall be credited by SRP on a daily basis commencing on October 1 of each year, as follows:

(1) When the total combined water storage level behind Bartlett and Horseshoe Dams is 178,186 acre-feet or less and SRPMIC water credits pursuant to the Bartlett Dam Agreement total less than 60,000 acre-feet, the FMIC Kent Decree Storage Account shall be credited with 80% of the amount of FMIC's daily diversion entitlement under the Kent Decree which is not diverted for use by FMIC.

(2) When the total combined water storage level behind Bartlett and Horseshoe Dams is 178,186 acre-feet or less and SRPMIC water credits pursuant to the Bartlett Dam Agreement total 60,000 acre-feet, the FMIC Kent Decree Storage Account shall be credited with 100% of the amount of FMIC's daily diversion entitlement under the Kent Decree which is not diverted for use by FMIC.

(3) When the total combined water storage level behind Bartlett and Horseshoe Dams is greater than 178,186 acre-feet, but less than 236,581 acre-feet or the actual storage capacity available for use by the United States and the Salt River Project behind these Dams, whichever is less, the FMIC Kent Decree Storage Account shall be credited with 100% of the amount of FMIC's daily diversion entitlement under the Kent Decree which is not diverted for use by FMIC.

FMIC shall order releases of water from the FMIC Kent Decree Storage Account as provided in Paragraph 7.2 of the Settlement Agreement. The Account shall be debited with all such releases and, in addition, with evaporation losses at the rate of one-half of one percent of the end of month credits in such Account. Any credit balance in the Account will be reduced automatically to zero at midnight on September 30 of each year. Any water credits remaining in the Account immediately preceding its automatic reduction to a zero balance shall be credited to the Salt River Project.

Any credits in the FMIC Kent Decree Storage Account shall spill from Bartlett Reservoir on the Verde River as specified in Paragraph 22.8 of the Settlement Agreement.

This Amendment shall become effective on the date the authorization contained in Section 409(b) of the Fort McDowell

Indian Community Water Rights Settlement Act of 1990 becomes effective and shall automatically terminate twenty-five years after such date.

Except as provided in this Amendment, all terms and conditions of the Bartlett Dam Agreement, as amended, and the Horseshoe Dam Agreement shall remain unchanged and in full force and effect.

Executed on the date set forth hereinabove by the parties hereto.

UNITED STATES OF AMERICA

By_____

Its_____

SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation

ATTEST

By_____

Its_____

By_____

Its_____

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona

ATTEST

By_____

Its_____

By_____

Its_____

FMIC EXHIBIT 9.2

MAP OF FMIC RESERVATION WITH ¶9.2 AREA

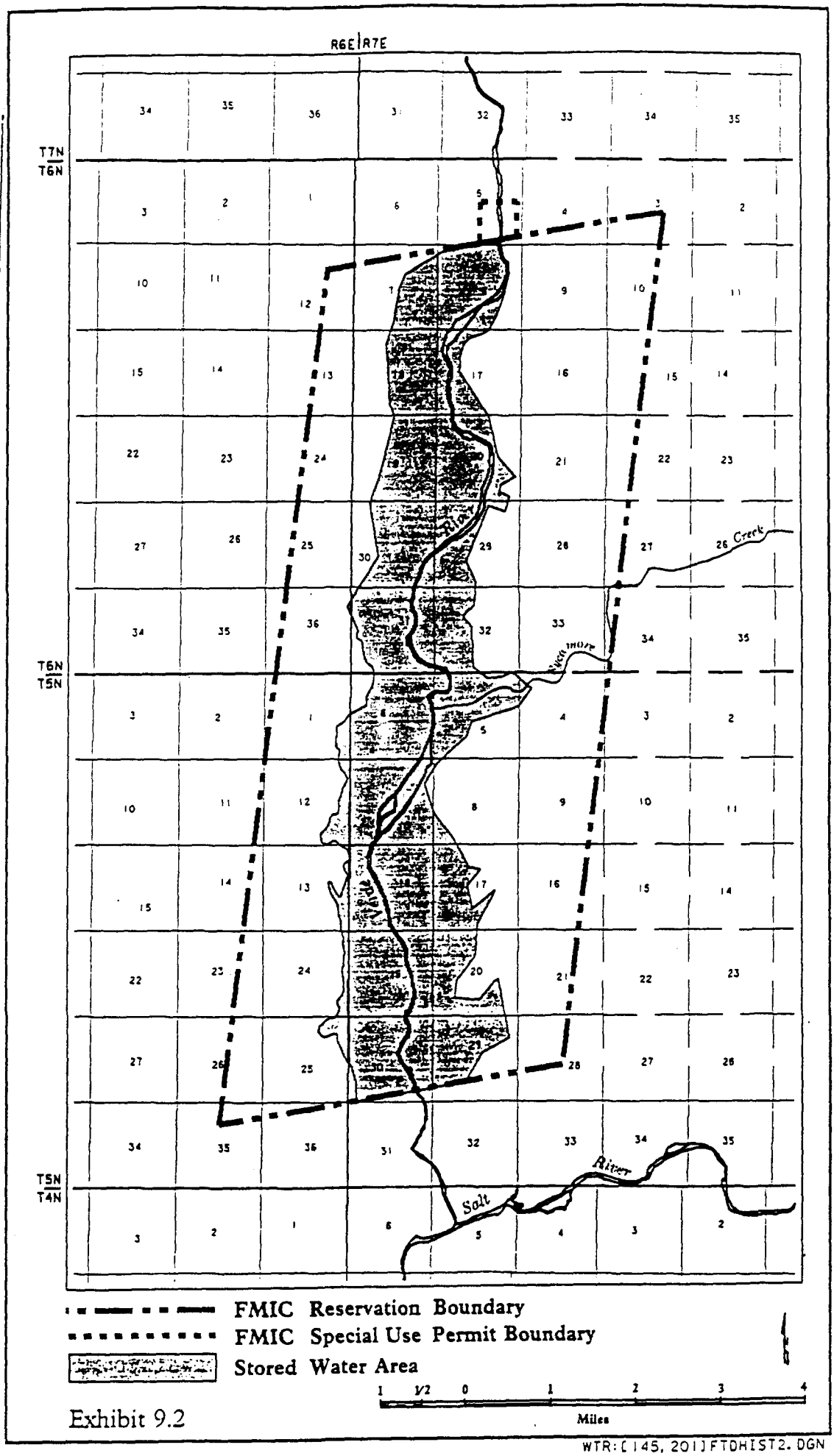


Exhibit 9.2

WTR: [145, 201]FTDHIST2.DGN

FMIC EXHIBIT 10.2

RWCD CREDIT LANDS

Land Classifications Subject to RWCD Credit of 5.6% of Water Diverted at Granite Reef Dam

CLASSIFICATION	ACRES
Association Regular Member Land	200,074.50
Special District Land - Tempe	22,494.65
Special District Land - Mormon Flat	9,707.30
Special District Land - Utah	2,091.65
New State Irrigation and Drainage District	2,327.70
Maricopa Garden Farms	1,258.10
Pump Contract Land (surface water only)	215.10
SUBTOTAL ASSOCIATIONS LANDS	238,170.00
Townsite Lands	9,615.30
Tempe Non-Member	458.35
Normal Flow Only Land Within SRRD	79.10
State of Arizona Tree Rows	35.50
SRPMIC Land in Sections 34, 35, & 36 T2N R5E	1,125.00
TOTAL	249,483.25

FMIC EXHIBIT 11.1

HVID AGREEMENTS

MASTER AGREEMENT FOR THE RELINQUISHMENT OF CENTRAL ARIZONA PROJECT WATER

1. **PREAMBLE:**

THIS AGREEMENT for the relinquishment of an entitlement of non-Indian agricultural priority Central Arizona Project water is entered into this 1st day of December, 1992, by and between the United States Department of the Interior and the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

2. **DEFINITIONS:**

2.1 "CAP" shall mean the Central Arizona Project, a system of aqueducts and appurtenant project works authorized and built pursuant to Section 301(a) of the Colorado River Basin Project Act of September 30, 1968 (43 U.S.C. §1501, et seq.), and constructed by the United States pursuant to such Act.

2.2 "CAWCD" shall mean the Central Arizona Water Conservation District, a special taxing district organized under the laws of the State of Arizona. CAWCD is responsible for repayment of the reimbursable CAP costs allocable to CAWCD pursuant to Master Repayment Contract No. 14-06-W-245, dated December 15, 1972, as subsequently amended, between CAWCD and the United States.

2.3 "Distribution System" shall have the same meaning as set forth in the Repayment Contract, as hereinafter defined, and shall mean the system of canals and laterals, together with appurtenant works and facilities, owned by the United States and

operated by HVID for purposes of conveying CAP waters from the Hayden-Rhodes Aqueduct of the CAP to HVID's service area.

2.4 "Eligible Acres" shall mean those acres of an agricultural character that are eligible to receive CAP water having a non-Indian agricultural priority, as defined in Subarticle 4.3, Section (g) of the Water Service Subcontract. A list of the Eligible Acres within HVID is attached hereto as Exhibit "A," and is by this reference incorporated herein.

2.5 "HVID" shall mean the Harquahala Valley Irrigation District, an irrigation district organized in accordance with the laws of the State of Arizona.

2.6 "Notice of Substantial Completion" shall mean the notice under which the Secretary determines that the water supply system of the Central Arizona Project is substantially complete.

2.7 "Indian Contractor" shall mean an Indian tribe or community that is entitled to use CAP water pursuant to decisions of the Secretary, as promulgated in Volume 48, No. 58 at page 12446 (dated March 24, 1983) of the Federal Register, and who has executed a contract with the United States for water service.

2.8 "Repayment Contract" shall mean Contract No. 4-07-30-W0050, captioned, "Contract Between the United States and the Harquahala Valley Irrigation District Providing for Construction of a Water Distribution System," dated January 6, 1984, together with any and all amendments thereto.

2.9 "Repayment Obligation" shall have the same definition as used in the Repayment Contract.

2.10 "Secretary" shall mean the Secretary of the Interior of the United States, or his duly authorized representative.

2.11 "Settlement Act" shall mean the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628, Title IV, 104 Stat. 4468, 4480.

2.12 "Subcontractor" shall mean a Municipal and Industrial ("M&I") water user, or agricultural water user who is entitled to use CAP water pursuant to decisions of the Secretary, as promulgated in Volume 48, No. 58 at page 12446 (dated March 24, 1983), and/or in Volume 57, Number 24, at page 4470 (dated February 5, 1992) of the Federal Register, and who has executed a subcontract with the United States and CAWCD for water service.

2.13 "Water Service Subcontract" shall mean Contract No. 4-07-30-W0043, captioned, "Subcontract Among the United States, the Central Arizona Water Conservation District, and the Harquahala Valley Irrigation District Providing for Water Service," dated November 18, 1983, together with any and all amendments thereto.

3. **EXPLANATORY RECITALS:**

3.1 HVID is an irrigation district that delivers CAP water through its Distribution System for agricultural use on 33,251 Eligible Acres located in western Maricopa County, Arizona. HVID's Distribution System was partially funded and constructed in accordance with the Repayment Contract; additional funds for construction were obtained by HVID through the issuance

of bonds ("Bonds") which were purchased by private investors.

3.2 The parties hereto agree that, as of August 1, 1992, the outstanding balance of the Repayment Obligation owed to the United States under the Repayment Contract is Twenty-Five Million, Four Hundred Ninety-Three Thousand, Twenty-Three and Seventy-One Hundredths Dollars ($25,493,023.71).

3.3 Under a decision promulgated in Volume 48, No. 58 at page 12446 of the Federal Register, dated March 24, 1983, the Secretary allocated to HVID certain CAP water. Thereafter, HVID executed the Water Service Subcontract under which it is entitled to CAP water with an agricultural priority ("HVID's CAP Entitlement").

3.4 HVID currently receives CAP water under an interim water contracting process established by the Secretary and CAWCD.

3.5 The United States Congress in the Settlement Act authorized and directed the Secretary to acquire for the Fort McDowell Indian Community a permanent water source of 13,933 acre feet of water per annum. In order to implement the terms of the Settlement Act, the Secretary has established the Fort McDowell Implementation Team.

3.6 Section 406(b) of the Settlement Act authorizes the Secretary to contract with HVID for the permanent relinquishment of all or any portion of HVID's CAP Entitlement. Pursuant to the authority set out in Section 406(b)(1) of the Settlement Act, for each Eligible Acre within HVID, the Secretary has the discretionary authority to convert the non-Indian agricultural

priority water relinquished by HVID into an acre-foot of CAP Indian priority water. Assuming such conversion takes place, the number of Eligible Acres for which HVID relinquishes its CAP Entitlement is equal to the number of acre feet of CAP Indian priority water acquired by the Secretary through such relinquishment.

3.7 On or about August 7, 1992, HVID and the Secretary by and through his chairman of the Fort McDowell Implementation Team, entered into an Agreement in Principle ("Agreement in Principle") summarizing the terms and conditions whereby HVID would relinquish and receive fair value for its entire CAP Entitlement. The terms and conditions of the Agreement in Principle were approved by HVID's landowners at a special election held on August 11, 1992.

3.8 The purpose of this Agreement is to further delineate the terms and conditions of the Agreement in Principle under which HVID will relinquish to the United States its CAP Entitlement in exchange for the forgiveness and/or satisfaction of the debt owed by HVID to the United States under the Repayment Contract, funds to redeem HVID's Bonds and other consideration.

4. **FAIR VALUE PER ACRE FOOT TO HVID:**

Pursuant to Section 406(b) of the Settlement Act, the parties agree that the fair value to HVID of each acre foot of CAP water permanently relinquished by HVID and assumed to be converted by the Secretary to Indian priority water is One

Thousand Fifty Dollars ($1,050.00) per acre-foot following such conversion. The valuation used in this Agreement is for the sole purpose of compensating HVID for its relinquishment of its CAP Entitlement, and shall not be deemed to have any precedential value for any other water rights settlement involving the Secretary. The Secretary shall not be deemed to have converted the CAP water relinquished by HVID to an Indian priority merely by virtue of his execution of this Agreement.

5. RELINQUISHMENT OF HVID'S CAP ENTITLEMENT:

Upon payment of the Net Value, as hereinafter defined, HVID will relinquish its entire CAP Entitlement.

6. CREDITING OF THE GROSS VALUE TO HVID:

Pursuant to Section 406(b)(2) of the Settlement Act, HVID shall be compensated for the total fair value of its relinquished CAP Entitlement in the following manner and subject to the following conditions:

6.1 Pursuant to the authority in Section 406(b)(2)(ii) of the Settlement Act, the Secretary agrees to use his best efforts to obtain a funding agreement ("Funding Agreement") with CAWCD under which CAWCD will fund the Gross Value, as hereinafter defined, of HVID's relinquished CAP Entitlement, less applicable offsets and deductions, as a prepayment of amounts that will be owed by CAWCD to the United States under its Master Repayment Contract No. 14-06-W-245, dated December 15, 1972, as

subsequently amended.

6.2 The Secretary and HVID hereby agree that the gross fair value ("Gross Value") to HVID of the CAP water relinquished by HVID is Thirty Four Million, Nine Hundred Thirteen Thousand, Five Hundred Fifty and No Hundredths Dollars ($34,913,550.00). From the Gross Value, the Secretary shall deduct the following amounts:

(a) Five Million, Seven Hundred Eighty-Six Thousand Dollars ($5,786,000.00) which the parties agree to be the present value of the Repayment Obligation owed to the United States by HVID under the Repayment Contract as of August 1, 1992. No interest, penalties or administrative charges shall accrue or become due and owing to the United States by virtue of HVID not paying the August 1, 1992, payment due under the Repayment Contract.

(b) To the extent the Gross Value exceeds the present value of the Repayment Obligation to be extinguished under 6.2(a), the Secretary shall next deduct as an offset the amount of Three Hundred Thousand Dollars ($300,000.00) as owed to the United States by HVID pursuant to I.G. Reports No. 88-51 and No. 91-I-272, as prepared by the Inspector General of the Department of the Interior.

(c) To the extent the Gross Value exceeds offsets or deductions made pursuant to Subarticles 6.2(a) and 6.2(b), above, the Secretary shall next deduct as an offset an amount equal to One Hundred Sixty Eight Thousand, One Hundred Sixty Dollars ($168,160.00).

6.3 Upon the execution of the Funding Agreement, HVID will open an escrow or trust account ("Escrow Account") with a title company, bank or financial institution ("Financial Institution") selected by HVID in its sole discretion. If applicable, HVID will provide the Secretary with a copy of its

instruction letter directing the Financial Institution to open the Escrow Account.

6.4 After deducting the offsets described above in Subarticles 6.2(a), 6.2(b) and 6.2(c), the remainder of the Gross Value (the "Net Value") will be paid by CAWCD into the Escrow Account on or before fifteen days after the Funding Agreement is approved by CAWCD. Upon payment of the Net Value into the Escrow Account, the following obligations of HVID shall be deemed to be discharged and extinguished:

(a) The Repayment Obligation in its entirety, together with any and all penalties, charges and interest thereon.

(b) The amount due to the United States, as set forth in Subarticle 6.2(b) above; and

(c) The amount owed by HVID pursuant to Subarticle 6.2(c) above.

6.5 Once funds are paid into the Escrow Account, such funds shall be subject to the exclusive control and direction of HVID, provided however, that notwithstanding the foregoing, HVID shall pay any and all amounts necessary to redeem its Bonds, as described below in Subarticle 6.6.

6.6 HVID will promptly direct the Financial Institution responsible for the Escrow Account to pay into HVID's bond principal and interest accounts maintained with the Maricopa County Treasurer's Office an amount sufficient to redeem HVID's outstanding Bonds on the next call date, January 1, 1993.

6.7 After paying the amounts set forth above to the County Treasurer's office, HVID, in its sole and exclusive

discretion, may use any excess funds in the Escrow Account to pay expenses incurred by HVID in negotiating and implementing this Agreement. In its sole and exclusive discretion, HVID may also distribute any excess funds in the Escrow Account to landowners within HVID.

7. TERMINATION OF THE WATER SERVICE SUBCONTRACT:

The Secretary and HVID agree that any and all rights and privileges set forth under the Water Service Subcontract will be terminated and extinguished, and that any attendant obligations and liabilities of HVID shall be deemed to be fully satisfied and discharged. Any termination or amendment of HVID's Water Service Subcontract shall be effective upon the written consent and ratification of CAWCD.

8. USE OF THE HVID DISTRIBUTION SYSTEM:

8.1 It is the intent of HVID to continue to use its Distribution System after relinquishment by entering into contracts among the Secretary and/or CAWCD for the delivery of excess CAP water. As used herein, the term "Excess CAP Water" means CAP water that is available for sale after the contractual demands of all Subcontractors and Indian Contractors for CAP water have been met. In addition to any requirements of the Repayment Contract, if applicable, the following terms and conditions apply to the use of the Distribution System by HVID:

(a) HVID agrees to be responsible for the operation, maintenance and replacement ("OM&R") costs of its

Distribution System; provided, however, that HVID assessments for such OM&R costs shall be levied on a uniform and nondiscriminatory basis on each Eligible Acre within HVID.

(b) The parties agree that title to the Distribution System shall remain in the name of the United States. If at such time the Secretary determines that the Distribution System is no longer needed for CAP purposes, then with the concurrence of HVID, the Secretary may exercise his discretion under Section 406(b)(3)(i) of the Settlement Act to transfer title to the Distribution System to HVID or its successor in interest.

8.2 In the event that HVID: (a) dissolves itself as a legal entity, or (b) permanently ceases its use of the Distribution System, HVID agrees that it will pay, or cause to be paid, all reasonable costs and perform all reasonable actions associated with closing down the Distribution System, as determined by the Secretary. As part of the actions necessary to complete the closure, the Secretary will perform a survey of all of the Distribution System and rights-of-way to determine whether hazardous materials or substances of any kind have been deposited on or in the Distribution System. HVID agrees to perform any reasonable action and pay reasonable costs that the Secretary deems necessary to remove or contain any hazardous materials or substances discovered in the survey; provided, however, that HVID shall not be required to undertake any such actions or pay any such costs that are not mandated or required by applicable federal or state environmental laws.

9. **MISCELLANEOUS PROVISIONS**:

9.1 After execution of this Agreement and until the

issuance of the Notice of Substantial Completion, HVID shall continue to have the right to receive CAP water under the interim water contracting process established by the Secretary and CAWCD for use on lands within HVID. Following the issuance of the Notice of Substantial Completion, the Secretary agrees not to restrict or prohibit HVID from receiving Excess CAP Water, as defined above in Subarticle 8.1.

9.2 By negotiating and executing this Agreement, HVID is acting in its capacity as a municipal corporation of the State of Arizona, and as such, there are no third party beneficiaries to this Agreement.

9.3 The performance of each party's obligations, as set forth hereunder, is contingent upon the following:

(a) Execution of a Funding Agreement between the Secretary and CAWCD.

(b) Compliance by HVID with all applicable requirements of Arizona law.

(c) Compliance by the Secretary with all applicable requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §4321, et seq., and the Endangered Species Act of 1973, 16 U.S.C. §1531, et seq.

9.4 To the extent that a conflict exists between the terms and conditions of the Agreement in Principle and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

9.5 In order to effectuate the purposes of this Agreement, the parties hereto agree to execute an amendment to

the Repayment Contract, which shall be substantially in the form of Exhibit "B," which is attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement the day and year first above written.

HARQUAHALA VALLEY IRRIGATION DISTRICT

By: Franklin W. Rogers

Title: President

UNITED STATES DEPARTMENT OF INTERIOR

By: John M. Sayre

Title: Assistant Secretary for Water and Science

EXHIBIT LIST

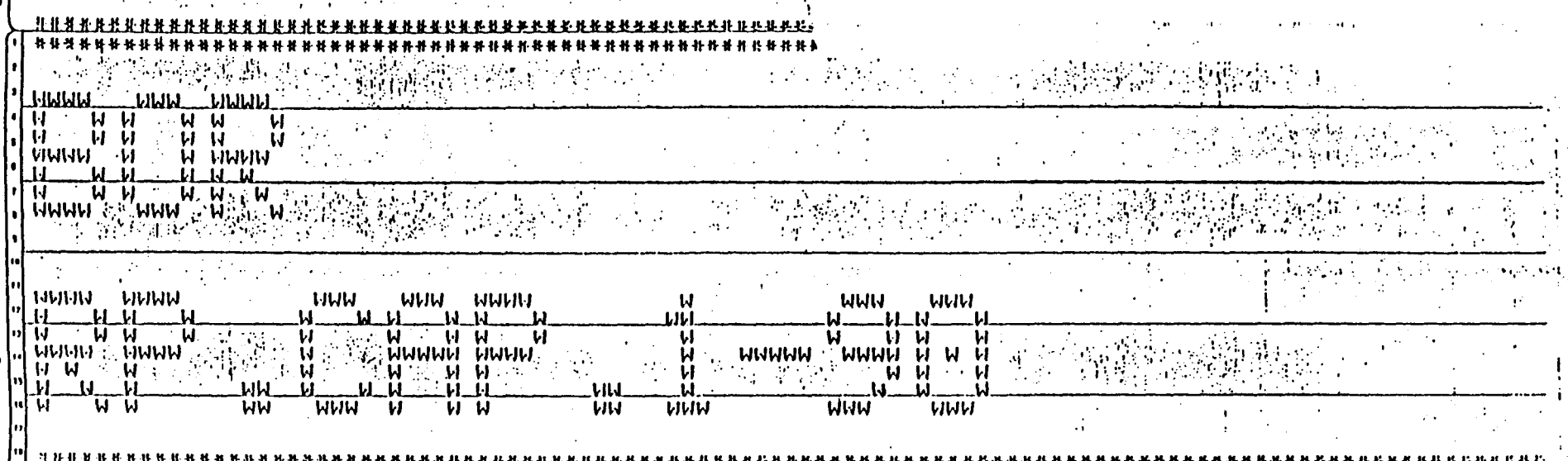
Exhibit "A"--Eligible Acres within HVID.

Exhibit "B"--Proposed amendment to the Repayment Contract.

0943F

User: DOR -at PRO

<TEMUSR>DWR>HARQ>RP.CAP;1-90



Label: PRT003 -form

Pathname: <TEMUSR>DWR>HARQ>RP.CAP;1-90
File last modified: 90-02-01,08:17:04.Thu

Spooled: 90-02-01,08:19:28.Thu [Spooler rev 19.41
Started: 90-02-01,08:17:32.Thu on: AMLC by: PRO

DEPARTMENT OF WATER RESOURCES 9750 COMPUTER SYSTEM

CAP-TRS-BLTYPE REPORT

ACRES	TWN	RNG	SE	CFR . UPD	BL.
526.99	T1N	R8W	05	201106.0000	11
526.99				201106.0000	
320.20	T1N	R8W	06	201147.0000	11
320.20				201147.0000	
318.25	T1N	R8W	06	201106.0000	11
318.25				201106.0000	
392.81	T1N	R8W	07	201118.0000	11
392.81				201118.0000	
208.36	T1N	R8W	07	201119.0000	11
208.36				201119.0000	
261.68	T1N	R8W	08	201090.0000	11
261.68				201090.0000	
4.95	T1N	R8W	18	201119.0000	11
4.95				201119.0000	
306.79	T1N	R8W	18	201123.0000	11
306.79				201123.0000	
159.95	T1N	R8W	18	201118.0000	11
159.95				201118.0000	
31.14	T1N	R8W	18	201119.0000	11
31.14				201119.0000	
252.66	T1N	R8W	19	201175.0000	11
252.66				201175.0000	
99.24	T1N	R8W	19	201125.0000	11
99.24				201125.0000	

Data Documents 39 S1

78.43				201141.0000		
79.21	T1N	R9W	07	201048.0000	11	
79.21				201048.0000		
79.49	T1N	R9W	07	201046.0000	11	
79.49				201046.0000		
80.90	T1N	R9W	07	201131.0000	11	
80.90				201131.0000		

1

1/31/90 PAGE 3

CAP-TRS-SLTYPE REPORT

ACRES	TWN	RNG	SE	GER	UPD	SL
78.55	T1N	R9W	07	201140.0000	11	
78.55				201140.0000		
79.67	T1N	R9W	07	201139.0000	11	
79.67				201139.0000		
78.88	T1N	R9W	07	201047.0000	11	
78.88				201047.0000		
79.80	T1N	R9W	07	201132.0000	11	
79.80				201132.0000		
61.65	T1N	R9W	11	201134.0000	11	
2.21	T1N	R9W	11	201134.0000	10	
63.85				201134.0000		
80.52	T1N	R9W	11	201142.0000	11	
80.52				201142.0000		
80.73	T1N	R9W	11	201143.0000	11	
80.73				201143.0000		
36.41	T1N	R9W	11	201133.0000	11	
36.41				201133.0000		
79.09	T1N	R9W	12	201144.0000	11	

79.89				201144.0000		
79.82	T1N	R9W	12	201128.0000	11	
79.82				201128.0000		
81.90	T1N	R9W	12	201127.0000	11	
81.90				201127.0000		
81.74	T1N	R9W	12	201126.0000	11	
81.74				201126.0000		
304.87	T1N	R9W	12	201233.0000	11	
304.87				201233.0000		

CAP-TRS-BLTYPE REPORT

ACRES	TWN	RNG	SE	CER . UPD	BL
587.15	T1N	R9W	13	201119.0000	11
587.15				201119.0000	
174.40	T1N	R9W	17	201052.0000	11
174.40				201052.0000	
317.52	T1N	R9W	17	201184.0000	11
317.52				201184.0000	
3.59	T1N	R9W	17	201052.0000	10
131.37	T1N	R9W	17	201052.0000	11
134.96				201052.0000	
614.26	T1N	R9W	18	201210.0000	11
5.77	T1N	R9W	18	201210.0000	10
620.04				201210.0000	
316.33	T1N	R9W	20	201108.0000	11
316.33				201108.0000	
294.79	T1N	R9W	20	201172.0000	11
294.79				201172.0000	

ACRES	TWN	RNG	SE	GFR . UPD	SL
310.53	T1N	R9W	21	201180.0000	11
310.53				201180.0000	
310.83	T1N	R9W	21	201170.0000	11
1.12	T1N	R9W	21	201170.0000	10
311.94				201170.0000	
166.48	T1N	R9W	22	201170.0000	11
360.57	T1N	R9W	22	201170.0000	11
8.10	T1N	R9W	22	201170.0000	10
535.16				201170.0000	
56.29	T1N	R9W	23	201164.0000	11
56.29				201164.0000	
82.02	T1N	R9W	23	201165.0000	11
82.02				201165.0000	

CAP-TRS-SLTYPE REPORT

ACRES	TWN	RNG	SE	GFR . UPD	SL
1.68	T1N	R9W	23	201216.0000	11
1.68				201216.0000	
77.08	T1N	R9W	24	201119.0000	11
39.99	T1N	R9W	24	201119.0000	10
2.77	T1N	R9W	24	201119.0000	11
119.85				201119.0000	
2.84	T1N	R9W	24	201122.0000	11
4.38	T1N	R9W	24	201122.0000	11
7.22				201122.0000	
310.52	T1N	R9W	24	201166.0000	11
2.09	T1N	R9W	24	201166.0000	10
312.60				201166.0000	
25.01	T1N	R9W	25	201160.0000	11
25.01				201160.0000	
70.74	T1N	R9W	25	201161.0000	11

70.74				201161.0000	
82.14	T1N	R9W	25	201162.0000	11
82.14				201162.0000	
81.92	T1N	R9W	25	201163.0000	11
81.92				201163.0000	
189.46	T1N	R9W	25	201151.0000	11
189.46				201151.0000	
82.20	T1N	R9W	26	201177.0000	11
82.20				201177.0000	
239.58	T1N	R9W	26	201166.0000	11
239.58				201166.0000	
79.19	T1N	R9W	26	201341.0000	11
79.19				201341.0000	
79.50	T1N	R9W	26	201234.0000	11

1/31/90 PAGE 6

CAP-TRS-SLTYPE REPORT

ACRES	TWN	RNG	SE	GFR . UPD	SL
1.73	T1N	R9W	26	201234.0000	10
81.23				201234.0000	
134.38	T1N	R9W	26	201151.0000	11
7.39	T1N	R9W	26	201151.0000	10
141.77				201151.0000	
632.13	T1N	R9W	27	201178.0000	11
2.07	T1N	R9W	27	201178.0000	10
637.96	T1N	R9W	28	201178.0000	11
1,272.16				201178.0000	
518.78	T1N	R9W	32	201159.0000	11
518.78				201159.0000	
318.22	T1N	R9W	33	201150.0000	11

318.22				201150.0000		
319.67	T1N	R9W	34	201180.0000	11	
319.67				201180.0000		
320.42	T1N	R9W	34	201183.0000	11	
319.68	T1N	R9W	35	201183.0000	11	
640.10				201183.0000		
317.18	T1N	R9W	35	201186.0000	11	
317.18				201186.0000		
605.49	T1N	R9W	36	201190.0000	11	
605.49				201190.0000		
12,817.90		R9W				
639.78	T1N	T2N	01	201040.0000	11	
639.78				201040.0000		
639.78		T2N				
17,216.91	T1N					
285.71	T1S	R8W	04	201110.0000	11	
285.71				201110.0000		

1

1/31/90 PAGE 7

CAP-TRB-SLTYPE REPORT

ACRES	TWN	RNG	SE	QER	UPD	SL
55.73	T1S	R8W	03	201156.0000	11	
55.73				201156.0000		
216.07	T1S	R8W	03	201116.0000	11	
7.92	T1S	R8W	03	201116.0000	10	
223.99				201116.0000		
78.47	T1S	R8W	04	201150.0001	11	
78.47				201150.0001		
316.17	T1S	R8W	04	201116.0000	11	

Data Documents 239 S1 1

316.17				201116.0000		
233.60	T1S	R8W	06	201109.0000	11	
233.60				201109.0000		
212.22	T1S	R8W	08	201114.0000	11	
212.22				201114.0000		
78.16	T1S	R8W	08	201232.0000	11	
78.16				201232.0000		
106.01	T1S	R8W	09	201110.0000	11	
106.01				201110.0000		
1,590.06		R8W				
635.65	T1S	R9W	01	201150.0000	11	
646.21	T1S	R9W	02	201150.0000	11	
634.71	T1S	R9W	03	201150.0000	11	
2.35	T1S	R9W	03	201150.0000	10	
644.40	T1S	R9W	04	201150.0000	11	
308.99	T1S	R9W	05	201150.0000	11	
3.81	T1S	R9W	05	201150.0000	10	
2,876.12				201150.0000		
26.57	T1S	R9W	06	201025.0001	11	
26.57				201025.0001		
19.78	T1S	R9W	06	201023.0000	11	
19.78				201023.0000		

CAP-TRS-SLTYPE REPORT

ACRES	TWN	RNG	SE	CFR . UPD	SL
18.79	T1S	R9W	06	201028.0000	11
18.79				201028.0000	
39.80	T1S	R9W	06	201301.0000	11
39.80				201301.0000	
37.54	T1S	R9W	06	201302.0000	11

37.54				201302.0000		
39.46	T1S	R9W	06	201303.0000	11	
39.46				201303.0000		
37.62	T1S	R9W	06	201304.0000	11	
37.62				201304.0000		
30.92	T1S	R9W	06	201307.0000	11	
30.92				201307.0000		
38.11	T1S	R9W	06	201305.0000	11	
38.11				201305.0000		
5.10	T1S	R9W	06	201020.0001	11	
2.18	T1S	R9W	06	201020.0001	10	
7.27				201020.0001		
242.42	T1S	R9W	08	201208.0000	11	
242.42				201208.0000		
38.19	T1S	R9W	08	201235.0000	11	
38.19				201235.0000		
27.51	T1S	R9W	09	201072.0000	11	
27.51				201072.0000		
192.42	T1S	R9W	09	201018.0000	11	
192.42				201018.0000		
40.88	T1S	R9W	09	201218.0002	11	
40.88				201218.0002		

CAP-TRS-SL TYPE REPORT

ACRES	TWN	RNG	SE	SEC . UPD	SL
28.20	T1S	R9W	09	201219.0000	11
28.20				201219.0000	
52.83	T1S	R9W	09	201017.0000	11

Data Documents 239 S1

7,080.12	T18					
619.65	T2N	R8W	19	201097.0000	11	
2.40	T2N	R8W	19	201097.0000	10	
618.05				201097.0000		
3.04	T2N	R8W	29	201107.0000	10	
319.45	T2N	R8W	29	201107.0000	11	
322.49				201107.0000		
318.04	T2N	R8W	29	201100.0000	11	
318.04				201100.0000		
611.39	T2N	R8W	30	201097.0000	11	
5.50	T2N	R8W	30	201097.0000	10	
1.30	T2N	R8W	30	201097.0000	10	
618.19				201097.0000		
3.50	T2N	R8W	30	201101.0000	11	
6.90	T2N	R8W	30	201101.0000	10	
610.72	T2N	R8W	31	201101.0000	11	
3.07	T2N	R8W	31	201101.0000	10	
624.19				201101.0000		
1.04	T2N	R8W	32	201104.0000	10	
636.06	T2N	R8W	32	201104.0000	11	
637.10				201104.0000		
620.67	T2N	R8W	33	201102.0000	11	
620.67				201102.0000		
3,758.73		R8W				
318.94	T2N	R9W	09	201155.0001	11	
317.42	T2N	R9W	10	201155.0001	11	
481.71	T2N	R9W	11	201155.0001	11	
15.07	T2N	R9W	14	201155.0001	10	
626.29	T2N	R9W	14	201155.0001	11	
638.31	T2N	R9W	23	201155.0001	11	
297.92	T2N	R9W	24	201155.0001	11	
2,655.66				201155.0001		
254.77	T2N	R9W	24	201155.0000	11	
254.77				201155.0000		

Data Documents 259 S1 1

CAP-TRS-BLTYPE REPORT

ACRES	TWN	RNG	SE	OFR . VPD	SL
614.43	T2N	R9W	25	201155.0001	11
614.43				201155.0001	
623.98	T2N	R9W	26	201067.0000	11
623.98				201067.0000	
159.88	T2N	R9W	34	201001.0000	11
159.88				201001.0000	
322.27	T2N	R9W	35	201207.0000	11
322.27				201207.0000	
597.48	T2N	R9W	36	201097.0000	11
597.48				201077.0000	
5,228.47		R3W			
8,987.20	T2N				
33,284.23					

Data Documents 239 S1 1

AGREEMENT BETWEEN THE UNITED STATES
DEPARTMENT OF THE INTERIOR
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
TO FUND THE ACQUISITION OF
THE HARQUAHALA VALLEY IRRIGATION DISTRICT
CENTRAL ARIZONA PROJECT WATER ENTITLEMENT

1. PARTIES

The parties to this Agreement executed as of the 3rd day of December, 1992, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, hereinafter referred to as CAWCD, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. RECITALS

2.1 Section 406(b) of the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628, Title IV, 104 Stat. 4469, 4480 (Settlement Act), authorizes the Secretary of the Interior (Secretary) to contract with the Harquahala Valley Irrigation District (HVID) for the permanent relinquishment of all or any portion of HVID's Central Arizona Project (CAP) water entitlement.

2.2 HVID has agreed to relinquish its entire CAP water entitlement pursuant to the authority in section 406(b) of the

Settlement Act.

2.3 Section 406(b)(2)(i) of the Settlement Act authorizes the Secretary, as consideration for the fair value of the water relinquished by HVID, to credit HVID with an appropriate share of its outstanding distribution system debt.

2.4 To the extent the fair value of the water relinquished by HVID exceeds the credit to the HVID debt authorized in the Settlement Act, Section 406(b)(2)(ii) of the Settlement Act authorizes the Secretary to offset the annual repayment requirements of the CAWCD under the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988 (Repayment Contract).

2.5 Section 406(b)(3)(ii) of the Settlement Act states that the Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP water entitlement.

2.6 Subarticle 9.4(d) of the Repayment Contract authorizes CAWCD to make additional payments on its repayment obligation at any time according to such terms and conditions as may be agreed upon by CAWCD and the Secretary.

2.7 It is the intent of Reclamation to issue a notice of substantial completion of the CAP water supply system, as provided in Article 9.4 of the Repayment Contract, no sooner than October 1, 1993, but not later than December 15, 1993.

3. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by the parties as follows:

3.1 CAWCD agrees to pay $28,659,390.00, as directed in Paragraph 3.2, pursuant to Subarticle 9.4(d) of the Repayment Contract, in exchange for the Secretary granting a credit under Section 406(b)(2)(ii) of the Settlement Act as set forth in Paragraph 3.3.

3.2 CAWCD will make such payment pursuant to written instructions provided to CAWCD by the Secretary's designee, who is the Chairman of the Department of the Interior's implementation team for the Fort McDowell Indian Community Water Rights Settlement Act.

3.3 In return for such payment, CAWCD shall receive a credit pursuant to Section 406(b)(2)(ii) of the Settlement Act against the annual payments due from CAWCD under Subarticle 9.4(a)

of the Repayment Contract. Such credit shall be applied to and credited in full against the first annual payment due from CAWCD under Subarticle 9.4(a). If the amount of such credit exceeds the first annual payment due from CAWCD under Subarticle 9.4(a), the amount of such excess shall be carried forward and applied to and credited in full against the next succeeding annual payments due from CAWCD under Subarticle 9.4(a) until exhausted. The amount of such credit shall be determined as follows:

(a) If the first annual payment due from CAWCD under Subarticle 9.4(a) of the Repayment Contract is due on January 15, 1994, the United States shall credit CAWCD in the amount of $31,703,022.00. If the amount of such first annual payment due from CAWCD exceeds $21,165,306.00, the amount of the credit to CAWCD under this Subparagraph 3.3(a) shall be reduced by seven percent (7%) of the difference between the actual amount of the payment due and $21,165,306.00.

(b) If the first annual payment due from CAWCD under Subarticle 9.4(a) of the Repayment Contract is due after January 15, 1994, the United States shall credit CAWCD in the amount of $31,013,639.00 plus (i) the amount that CAWCD would have earned on $31,013,639.00 from January 15, 1994, to the date the credit is applied to and credited against the first annual payment due from CAWCD

under Subarticle 9.4(a) and (ii) the amount(s) that CAWCD would have earned on any excess amount(s) carried forward and applied to and credited against the next succeeding annual payment(s) due from CAWCD under Subarticle 9.4(a) from the date that the first annual payment is due from CAWCD under Subarticle 9.4(a) to the date such excess amount(s) are applied to and credited against such succeeding annual payment(s). The amount(s) that CAWCD would have earned shall be determined by using the weighted rate received by CAWCD on all of its investments for the period(s) during which there is a delay of the credit provided for after January 15, 1994.

3.4 The method of payment of Operation, Maintenance, and Replacement (OM&R) costs associated with the water relinquished by HVID will be agreed upon in the overall resolution of OM&R issues to be addressed separately by the United States and CAWCD.

3.5 CAWCD shall cooperate in the execution and approval of any agreements requiring CAWCD's approval/execution for relinquishment of HVID's CAP water entitlement. However, other than providing funds pursuant to this Agreement, CAWCD shall not be responsible for the terms and conditions agreed upon between the United States and HVID for the United States' acquisition of the relinquished water.

3.6 This Agreement shall terminate when CAWCD has received in full the credit provided for in Paragraph 3.3.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Regional Director
Lower Colorado Region, Bureau of Reclamation

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

By _____
President

ATTEST:

_____
Secretary

Original

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND THE
HARQUAHALA VALLEY IRRIGATION DISTRICT
PROVIDING FOR DISCHARGE OF REPAYMENT OBLIGATION

CENTRAL ARIZONA PROJECT

Preamble

1. THIS CONTRACT, made this _____ day of _____, 1992, in pursuance generally of the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and particularly the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4468, 4480), between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting through the Secretary of the Interior, and the HARQUAHALA VALLEY IRRIGATION DISTRICT, hereinafter referred to as "HVID," organized under the laws of Arizona, with its principle place of business in Maricopa County, Arizona;

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, on November 18, 1983, the United States, HVID, and the Central Arizona Water Conservation District entered into a water service subcontract, providing for the delivery of Central Arizona Project water to HVID; and

WHEREAS, on January 6, 1984, the United States and HVID entered into a contract providing for construction of a water distribution system to convey

CAP water from the Central Arizona Project water supply system to the HVID service area, and for repayment of the Federal costs by HVID; and

WHEREAS, the January 6, 1984, contract was subsequently amended and/or supplemented on January 8, 1986, May 30, 1986, and October 3, 1986, to accommodate increases in the cost of constructing the distribution system and to provide for construction of a portion of the distribution system by HVID pursuant to the Drainage and Minor Construction Act (70 Stat. 274); and

WHEREAS, construction of HVID's distribution system has been completed and repayment of the Federal costs was initiated in 1989; and

WHEREAS, the Fort McDowell Indian Community Water Rights Settlement Act of 1990 authorizes the Secretary to acquire all or a portion of HVID's CAP water entitlement for use in the settlement and for other Indian water rights settlements; and

WHEREAS, the United States and HVID have entered into a master agreement providing for HVID to relinquish HVID's entitlement to CAP water for use in the settlement, hereinafter referred to as the "Master Agreement"; and

WHEREAS, HVID and the United States desire to amend HVID's distribution system repayment contract to provide for the discharge of HVID's repayment obligation, to provide for the continued operation, maintenance, and replacement of the distribution system, and to consolidate HVID's existing repayment contract, as amended, into one document to facilitate future administration of the contract;

NOW THEREFORE, in consideration of the covenants herein contained, it is agreed as follows:

Definitions

3. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term:

(a) "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior of the United States or his duly authorized representative;

(b) "Central Arizona Water Conservation District" or "CAWCD" shall mean the water conservation district, organized under the laws of Arizona, which is responsible for repayment of the reimbursable Central Arizona Project costs allocable thereto, pursuant to Contract No. 14-06-W-245 between the United States and the District;

(c) "Central Arizona Project" shall mean the project works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act;

(d) "Distribution System" or "Project" shall mean and include the water delivery system, constructed with funds provided by the United States and HVID, for the purpose of conveying water from the Central Arizona Project water supply system to the HVID service area;

(e) "Project works" shall mean and include all components of the distribution system, including land, interests in land, and rights-of-way;

(f) "Year" shall mean the calendar year.

Purpose of Contract

4. The purpose of this contract is to provide for discharge of HVID's Distribution System repayment obligation and for the continued operation, maintenance, and replacement of the Distribution System. This contract supersedes and replaces the January 6, 1984, contract, as amended and/or supplemented on January 8, 1986, May 30, 1986, and October 3, 1986.

Discharge of Repayment Obligation

5. Upon the effective date of this contract, HVID's repayment obligation to the United States as of August 1, 1992, under the January 6, 1984, contract, as amended, is hereby discharged. No interest, penalties, or administrative charges shall accrue or become due or owing to the United States by virtue of HVID not paying the August 1, 1992, payment due under the Distribution System repayment contract.

Effective Date

6. This contract shall become effective once it has been executed and the following conditions have been met:

(a) HVID, CAWCD, and the United States have executed an agreement terminating HVID's CAP water service subcontract; and

(b) HVID has provided the Contracting Officer a certified copy of the results of an election whereby the landowners within HVID have approved the relinquishment of HVID's CAP water entitlement.

Title to Distribution System

7. Unless and until the United States transfers title of the Distribution System to a non-Federal party pursuant to the authority contained in section 406(b)(3)(i) of the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4484), title to the distribution system shall remain in the name of the United States. In the event that the United States elects to transfer title of the Distribution System to HVID, then, with the concurrence of HVID, HVID agrees to accept title to the Distribution System pursuant to separate agreement between the United States and HVID.

Use of Distribution System

8. After the effective date of this contract, HVID may continue to use the Distribution System to deliver excess CAP water which may be made available to HVID on a temporary or interim basis pursuant to separate contract with the United States and/or CAWCD. Subject to the advance written approval of the Contracting Officer, HVID may also use the Distribution System at non-Federal expense to convey other water or for other purposes; Provided, That conveyance of such other water or use of the Distribution System for other purposes shall not be detrimental to the delivery of any CAP water for irrigation purposes in HVID.

Operation and Maintenance of Project Works--
Payment of Miscellaneous Costs

9. (a) HVID, without expense to the United States, shall care for, operate, and maintain the project works in full compliance with the terms of this contract, and in such manner that the project works will remain in good and efficient condition.

(b) Necessary repairs of the project works shall be made promptly by HVID. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the project works threatening or causing interruption of water service, the Contracting Officer may issue to HVID a special written notice of the necessary repairs. Within 60 days of receipt of such notice, HVID shall either make the repairs or submit a plan acceptable to the Contracting Officer for accomplishing said repairs. If HVID fails to do either within 60 days of receipt of said notice, the Contracting Officer may cause the repairs to be made and the cost thereof shall be paid by HVID as directed by the Contracting Officer.

(c) HVID shall make no substantial change in the project works without first obtaining the written consent of the Contracting Officer.

(d) HVID agrees to indemnify the United States for, and to hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of HVID or the United States required under this contract, regardless of who performs those duties.

(e) In the event HVID is found by the Contracting Officer to be operating the project works or any part thereof in violation of this contract, then, upon the election of the Contracting Officer, the United States may take over from HVID the care, operation, and maintenance of such project works by giving written notice to HVID of such election and of the effective date thereof; Provided, however, That the Contracting Officer shall provide HVID with sixty days' advance notice of such election and an opportunity to correct the deficiency within such period prior to taking over operation, maintenance, and replacement of the project works. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, HVID shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the responsibility for the care, operation, and maintenance of the works may be transferred to HVID.

(f) In addition to all other payments to be made by HVID under this contract, HVID shall reimburse the United States, following the receipt of a statement from the Contracting Officer, for all miscellaneous costs incurred by the United States for unusual work involved in the administration and supervision of this contract.

Examination and Inspection of Project Works for Determining Adequacy of Operation and Maintenance Program

10. (a) The Contracting Officer may, from time to time, examine HVID's books, records and reports, and the project works being operated by HVID to assist HVID in determining the condition of the project works, and the adequacy of the operation and maintenance program, the reserve fund, and the water conservation program. The Contracting Officer may examine any or all of the project works which were constructed by the United States and transferred to HVID, or project works which were constructed by HVID with funds advanced or reimbursed by the United States.

(b) The Contracting Officer may, or HVID may request the Contracting Officer to, conduct special inspections of any project works being operated by HVID and special audits of the HVID's books and records to ascertain the extent of any operation and maintenance deficiencies, to determine the remedial measures required for their correction, and to assist HVID in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to HVID by the Contracting Officer.

(c) HVID shall provide access to the project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection or audit.

(d) The Contracting Officer shall prepare reports based on the examinations, inspections or audits, and furnish copies of such reports and any recommendations to HVID.

(e) HVID shall reimburse the actual cost incurred by the United States in making operation and maintenance examinations, inspections, and audits, and preparing associated reports and recommendations.

Emergency Reserve Fund

11. (a) No later than 60 days following the effective date of this contract, HVID shall accumulate and maintain a reserve fund, which HVID shall keep available to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water or power service.

(b) HVID shall accumulate the reserve fund with a deposit or investment of $100,000 to a federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be made available within a reasonable time to meet expenses for such purposes as identified in paragraph (d). Following an emergency expenditure from the fund, annual deposits of $17,000 shall be made from the year following the emergency expenditure until the previous balance is

restored. After the previous balance is restored, the annual deposits may be discontinued and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual agreement between HVID and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project, the size of the annual operation and maintenance budget, additions to, deletions from, or changes in project works, and operation and maintenance costs not contemplated when this contract was executed.

(d) HVID may make expenditures from such reserve fund only for meeting usual operation and maintenance costs incurred during periods of special stress as described in paragraph (a), and unforeseen extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe problems can be eliminated) during such periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, HVID shall restore that balance by the accumulation of annual deposits, as specified in paragraph (b).

(e) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(f) On or before February 1 of each year, HVID shall provide an annual statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

Charges for Delinquent Payments

12. (a) HVID shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, HVID shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, HVID shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, HVID shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, HVID shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due

date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

General Obligation--Benefits Conditioned Upon Payment

13. (a) Any obligation of HVID to pay the United States as provided in this contract is a general obligation of HVID notwithstanding the manner in which the obligation may be distributed among HVID's water users and notwithstanding the default of individual water users in their obligations to HVID.

(b) The United States shall not make water available to HVID through project facilities during any period (1) in which HVID may be in arrears in the advance payment of any operation and maintenance charges due the United States; (2) in which HVID may be in arrears in the funding of the emergency reserve fund under Article 11; and (3) in which HVID has not met its obligations under this contract. HVID shall not furnish water made available through project facilities for lands or parties which are in arrears in the advance payment of operation and maintenance charges levied or established by HVID.

Quality of Water

14. The operation and maintenance of CAP facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

Water and Air Pollution Control

15. HVID, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

Books, Records, and Reports

16. HVID shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: HVID's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and right-of-way use agreements; the water users' land-use (crop census), landownership, land-leasing and water-use data; and other matters that the Contracting Officer may require; Provided, That HVID shall not be required to submit the water users' land-use (crop census) report for any year in which no project water is delivered to HVID. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

Compliance with Reclamation Laws

17. The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this contract is subject to Reclamation laws, as amended and supplemented. For purposes of administering the Reclamation Reform Act of 1982, the discharge of HVID's distribution system obligation under this contract shall not constitute prepayment of the distribution system obligation to the United States.

Notices

18. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of HVID, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to HVID, Star Route 2, Box 397, Buckeye, Arizona 85236. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

Equal Opportunity

19. During the performance of this contract, HVID agrees as follows:

(a) HVID will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. HVID will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. HVID agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) HVID will, in all solicitations or advertisements for employees placed by or on behalf of HVID, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) HVID will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of HVID's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) HVID will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) HVID will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of HVID's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and HVID may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) HVID will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended

Executive Order, so that such provisions will be binding upon each subcontractor or vendor. HVID will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event HVID becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, HVID may request the United States to enter into such litigation to protect the interests of the United States.

Compliance With Civil Rights Laws and Regulations

20. (a) HVID shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) HVID makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. HVID recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

Contingent on Appropriation or Allotment of Funds

21. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve HVID from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

Assignment Limited--Successors and Assigns Obligated

22. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

Officials Not to Benefit

23. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

Administration of Project Lands

24. The lands and rights-of-way acquired and needed by the United States for the purposes of care, operation, and maintenance of project works may be used by HVID for such purposes. HVID shall ensure that no unauthorized encroachment occurs on project lands and rights-of-way. HVID shall not issue rights-of-way across project land, issue land rights to project lands, or issue leases, licenses, permits, or special use agreements involving project land, rights-of-way, or transferred works. All such land use instruments shall only be issued by the Contracting Officer.

Changes in HVID's Organization

25. While this contract is in effect, no change may be made in HVID's organization, by inclusion or exclusion of lands, dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That the United States hereby expressly consents to the adoption by HVID of a cash basis of operation as defined by Arizona Revised Statutes § 48-3132, and/or the amendment of HVID's formation petition on file with the Maricopa County Board of Supervisors to establish separate classifications of HVID's lands for purposes of assessment, if HVID desires to do so.

Conflict Provision

26. To the extent that a conflict exists between the terms and conditions of the Master Agreement and the terms and conditions of this contract, the terms and conditions of this contract shall control.

IN WITNESS WHEREOF, the parties hereto have executed this contract No. _____ the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

HARQUAHALA VALLEY IRRIGATION DISTRICT

ATTEST:

By: _____
Secretary

By: _____

Title: _____

DF

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE HARQUAHALA VALLEY IRRIGATION DISTRICT
PROVIDING FOR RELINQUISHMENT OF WATER

CENTRAL ARIZONA PROJECT

Preamble

1. THIS CONTRACT, made this 8th day of December, 1992, in pursuance generally of the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and particularly the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4469, 4480), between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD", a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the HARQUAHALA VALLEY IRRIGATION DISTRICT, hereinafter referred to as "HVID," organized under the laws of Arizona, with its principle place of business in Maricopa County, Arizona;

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, on November 18, 1983, the United States, HVID, and CAWCD executed a Central Arizona Project water service subcontract, providing for the delivery of 7.67 percent of the non-Indian agricultural supply to HVID; and

WHEREAS, by notice published in the Federal Register on February 5, 1992, the Secretary of the Interior allocated an additional 1.06 percent of the non-Indian agricultural supply to HVID, hereinafter referred to as "reallocated water"; and

WHEREAS, the Fort McDowell Indian Community Water Rights Settlement Act of 1990 authorizes the Secretary to acquire all or a portion of HVID's CAP water entitlement for use in the settlement; and

WHEREAS, HVID desires to relinquish its contractual entitlement to CAP water to the Secretary for uses authorized in the Fort McDowell Indian Community Water Rights Settlement Act of 1990, to terminate its CAP water service subcontract, and to relinquish any rights HVID may have to the reallocated water; and

WHEREAS, the CAWCD and the United States have executed the Agreement Between the United States Department of the Interior and the Central Arizona Water Conservation District to Fund the Acquisition of the Harquahala Valley Irrigation District Central Arizona Project Water Entitlement;

NOW THEREFORE, in consideration of the covenants herein contained, it is agreed as follows:

Definitions

3. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term:

(a) "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior of the United States or his duly authorized representative;

(b) "Central Arizona Project" shall mean the project works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act;

Service Subcontract and HVID's CAP water service subcontract shall terminate; (2) HVID's entitlement to 7.67 percent of the CAP non-Indian agricultural supply (or as such percentage would have been adjusted in the future had HVID's water service subcontract continued to be in full force and effect) shall be assigned to the Secretary for uses authorized by the Fort McDowell Indian Community Water Rights Settlement Act of 1990; and (3) HVID shall forfeit all rights it may have to the reallocated water and such water shall revert to the Secretary as provided for in the February 5, 1992, CAP water allocation decision.

(b) After the effective date of this contract, HVID shall have no further right to delivery of CAP water and HVID will no longer be considered a CAP subcontractor for purposes of administering the Central Arizona Project. However, the Contracting Officer and/or CAWCD may enter into separate contracts with HVID providing for interim or temporary delivery of excess CAP water.

(c) HVID and CAWCD recognize that the Secretary will be using the acquired HVID CAP water entitlement and allocation for Indian water rights settlement purposes, and neither HVID or CAWCD shall have any claim to such entitlement after the effective date of this contract.

(d) For purposes of determining CAWCD's repayment obligation under Contract No. 14-06-W-245, the water acquired by the Secretary pursuant to this contract shall be treated as "Indian" water in the CAP cost allocation and repayment process.

Contingent on Appropriation or Allotment of Funds

7. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve HVID from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

(c) "HVID's CAP Water Service Subcontract" shall mean the contract entitled "Subcontract Among the United States, the Central Arizona Water Conservation District, and the Harquahala Valley Irrigation District Providing for Water Service", dated November 18, 1983, and assigned Contract No. 4-07-30-W0043.

Effective Date

4. This contract shall become effective once it has been executed and the following conditions have been met:

(a) HVID and the United States have executed an amendment to HVID's CAP distribution system contract providing for discharge of HVID's CAP Distribution System debt and for operation, maintenance, and replacement of the Distribution System;

(b) Funds have been made available to HVID in accordance with the Master Agreement for the Relinquishment of Central Arizona Project Water and the Agreement Between the United States Department of the Interior and the Central Arizona Water Conservation District to Fund the Acquisition of the Harquahala Valley Irrigation District Central Arizona Project Water Entitlement;

(c) HVID has made a showing to the Contracting Officer that HVID has made an irrevocable election to set aside sufficient funds to redeem HVID's outstanding bonds on January 1, 1993, and to redeem the bonds on that date; and

(d) HVID has provided the Contracting Officer a certified copy of the results of an election whereby the landowners within HVID have approved the relinquishment of HVID's CAP water entitlement;

Termination of HVID's CAP Water Service Subcontract

6. (a) Upon the effective date of this contract, (1) HVID shall permanently relinquish its entitlement to CAP water under HVID's CAP Water

Officials Not to Benefit

8. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

IN WITNESS WHEREOF, the parties hereto have executed this contract No. _____ the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

HARQUAHALA VALLEY IRRIGATION DISTRICT

By: Franklin W. Rogers
Title: President

ATTEST:
By: _____
~~Secretary~~
DISTRICT MANAGER

By: _____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Title: President

ATTEST:
By: Thomas A Clark
~~Secretary~~
General Manager

By: _____
Secretary

FMIC EXHIBIT 19.1

FMIC AND U.S. WAIVER AND RELEASE

WAIVER AND RELEASE OF CLAIMS

(a) Except as provided in paragraph (b) herein, the Fort McDowell Indian Community ("FMIC") on behalf of itself and its members and the Secretary of the Interior on behalf of the United States, in consideration of benefits realized under the Fort McDowell Indian Community Water Rights Settlement Agreement dated as of _____, ____ (hereinafter referred to as the "FMIC Agreement"), and in accordance with the commitments under Paragraph 19.1 of the FMIC Agreement and pursuant to the authorization granted in Section 409 of the Fort McDowell Indian Community Water Rights Settlement Act of 1990, hereby waives and releases:

(1) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation, from time immemorial to the date of execution of this Waiver and Release of Claims, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of

Arizona;

(2) Any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation from and after the date of execution of this Waiver and Release of Claims, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(3) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the FMIC Reservation based upon aboriginal occupancy by the Indians of the Fort McDowell Indian Community, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

Nothing herein shall prevent FMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley.

(b) Notwithstanding the execution by FMIC of the

Waiver and Release herein, FMIC, its members, and the United States on their behalf shall retain the right to assert the following claims for lands within the FMIC Reservation:

(1) Claims for the enforcement of FMIC's water rights as provided for in the FMIC Agreement, including rights based on the Kent Decree and under the continuing jurisdiction of the Court in the Gila River Adjudication.

(2) Claims against any person for the breach or enforcement of the terms of the FMIC Agreement or rights recognized in the FMIC Agreement.

(3) The United States or FMIC may assert a claim to Spill Water in the Gila River Adjudication as provided in Paragraph 13 of the FMIC Agreement.

(c) Except as provided in Paragraphs 19.2 and 19.5 of the FMIC Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of FMIC and its members based upon:

(1) water rights or injuries to water rights of FMIC and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of FMIC and its members.

Dated _____

Attest:

THE FORT MCDOWELL INDIAN COMMUNITY

_____
Secretary

By_____
President

Dated _____

THE UNITED STATES OF AMERICA

By_____
Secretary of the Interior

FMIC EXHIBIT 19.5

GILA RIVER ADJUDICATION STIPULATION AND JUDGMENT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	)	W-1; W-2; W-3; W-4
	)	STIPULATION

THIS STIPULATION, dated as of March 23, 1993, is entered into among the United States of America; the Fort McDowell Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert; and the Central Arizona Water Conservation District.

1.0 RECITALS

1.1 The continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right claims based upon federal, state and other law. These include claims by the Fort McDowell Indian Community to a tribal homeland water right sufficient to irrigate and develop the Community's reservation northeast of Phoenix. In addition, the validity of certain non-Indian claims to water and the liability of the

United States and other water users to the Fort McDowell Indian Community have been raised. These issues are the subjects of extensive and complex litigation pending in the Arizona state and federal courts.

1.2 It is recognized by all parties to the Fort McDowell Water Rights Settlement Agreement (Agreement) that the resolution of these conflicts must recognize long-standing vested water rights arising under Federal law, State law, the Kent Decree and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. Settlement of these issues must also accommodate the imperative need of the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler, and the Town of Gilbert to satisfy increasing municipal and industrial (M&I) water demands.

1.3 The representatives of the United States of America, the State of Arizona, the Fort McDowell Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Central Arizona Water Conservation District and the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, and the Town of Gilbert have agreed to permanently settle the water rights and damage claims of the Fort McDowell Indian Community, to finally resolve pending litigation of water rights.

1.4 Section 402(a)(1) of the Fort McDowell Water Rights Settlement Act states that it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.5 The objective of this settlement is to resolve all outstanding water-related litigation and settle once and for always the water rights of the Fort McDowell Indian Community and its members based upon federal, state and other laws by providing to the Fort McDowell Indian Community sufficient water from various sources to irrigate 4,000 acres of agricultural land and to develop 18,350 acres for urban and other uses within the FMIC Reservation.

1.6 The complete Fort McDowell Water Settlement Agreement, including all related and incorporated agreements, between the undersigned parties is attached hereto as Exhibit A. The complete Fort McDowell Water Settlement Agreement, including all related and incorporated agreements, between the undersigned parties is on file in this court, in every Arizona County, and at the Department of Water Resources. This Stipulation is not intended to supersede any term of the Agreement. The Agreement is intended to be enforceable among the undersigned parties in pursuing their claims in these proceedings.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties hereto stipulate as follows:

2.0 DEFINITIONS

This Stipulation will employ abbreviated terms which will have meanings as stated below.

2.1 "Act" shall mean the Fort McDowell Indian Community Water Rights Settlement Act of 1990. Pub. L. 101-628, Title IV, 104 Stat. 4480 (1990). The Act is attached to the Agreement as Exhibit 2.1.

2.2 "Agreement" shall mean the Fort McDowell Indian Community Water Rights Settlement Agreement dated _____.

2.3 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as amended.

2.4 "Divert(s)", "diverted" or "diversion(s)" shall mean to remove or the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump or other act of man.

2.5 "Effluent" shall mean water which, after being withdrawn as groundwater or diverted as surface water, has been used for

domestic, municipal or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

2.6 "FMIC" shall mean the Fort McDowell Mohave-Apache Indian Community, a community of Yavapai Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary, and its members.

2.7 "FMIC Reservation" shall mean that area of land described in Exhibit "2.8" to the Agreement.

2.8 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as IN RE the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) including subsequent enforcement proceedings therein.

2.9 "Kent Decree" shall mean the decree dated March 1, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

2.10 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP which for the purpose of the Agreement is limited to modifications to Roosevelt Dam on the Salt River.

2.11 "Rio Verde" shall mean Rio Verde Utilities, Inc., its successors and assigns, or any entity diverting water for use by the community of Rio Verde.

2.12 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

2.13 "Secretary" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

2.14 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.15 "SRRD" shall mean the Salt River Reservoir District as defined, on the effective date of the Agreement, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Users' Association.

3.0 STIPULATIONS AND AGREEMENTS

The Agreement includes as exhibits additional and subsidiary documents in the form of contracts, stipulations for settlement of litigation, waivers of claims, legislation, maps, reports, and policy statements, all of which are incorporated in the Agreement.

4.0 ANNUAL WATER DUTY

The FMIC Reservation land to be irrigated with the water provided by the Agreement will be served with new, modern delivery facilities. Accordingly, a water duty of 4.5 acre-feet per acre per year can be used for the purposes of the Agreement to calculate the water required to irrigate 4,000 acres of agricultural land on the FMIC Reservation. A water duty of 1 acre-foot per acre per year is used to calculate the water required for the 18,350 acres to be developed for urban and other uses on the FMIC Reservation. The water duty shall not limit the actual use, application rate, or management of water within the FMIC Reservation.

5.0 TOTAL WATER REQUIREMENT AND LIMITATION

With the exception of Verde River Spill Water described in Paragraph 13.0 of the Agreement, and based on the water duties as described in Paragraph 4.0 of the Agreement the total maximum annual diversion by or for the FMIC Reservation from all sources shall be limited to 36,350 acre-feet. Any entitlement to water of any individual member of the FMIC for lands within the FMIC Reservation shall be satisfied out of the water resources provided to FMIC in the Agreement.

Effluent developed on the FMIC Reservation from the sources listed in Paragraph 6.1 of the Agreement shall be used or reused for such purposes on the FMIC Reservation as FMIC may determine

and shall not be included in the total maximum annual diversion right of 36,350 acre-feet.

Diversion by entities other than FMIC from within the exterior boundaries of the FMIC Reservation in fulfillment of those other entities' independent state or federal water rights, including specifically the City of Phoenix, shall not count against FMIC's total maximum annual diversion right of 36,350 acre-feet.

In addition to the water provided to FMIC under the Agreement, FMIC may, consistent with state and federal law, acquire rights to water pursuant to state law or by contract with the United States, provided, however, that no rights so acquired shall be based upon claims waived pursuant to Paragraph 19.0 of the Agreement and Section 409 of the Act, nor shall the acquisition of any such rights vitiate the Waiver and Release of Claims executed by FMIC and the United States pursuant to Paragraph 19.0 of the Agreement and Section 409 of the Act.

6.0 SOURCES OF WATER

6.1 The total maximum annual diversion right of 36,350 acre-feet will be derived from the following sources in the quantities set forth in the table below. The ability to divert water by or for FMIC is conditioned by and dependent upon limitations and restrictions set forth in the Agreement and particularly in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0, 15.0, 16.0, and 20.0 thereof.

SOURCE TABLE

Source	Amount (acre feet per year)	Return Flow Factor (see ¶7.1)	Maximum Annual Diversion From Verde River (acre-feet)	See ¶
6.1.1 Kent Decree	7,060	-	7,060	8.0 22.7(c)
6.1.2 SRP	4,730	-	4,730	9.0
6.1.3 SRP (non-ag. use only)	2,000	-	2,000	9.0
6.1.4 RWCD	3,200	x 1.0526	3,368	10.0
6.1.5 Other Water	13,933	x 1.0526	14,666	11.0
6.1.6 FMIC CAP Allocation	4,300	x 1.0526	4,526	12.0
Total	35,223		36,350 acre-feet	

6.2 Except for the CAP water identified in Paragraphs 11.0 and 12.0 of the Agreement, the priority date of the water

available for diversion by or for FMIC from the sources listed in Paragraph 6.1 of the Agreement shall be the priority date of those sources as determined in the Gila River Adjudication.

6.3 Neither SRP nor any other party to the Agreement shall be liable to FMIC for failure to store Verde River water or deliver water to FMIC from the sources described in Paragraphs 6.1.2 through 6.1.6 of the Agreement as a result of an insufficient supply of water from the Verde River, hostile diversion of water from the Verde River or its tributaries contributing to an insufficient supply of water, compliance with the provisions of Articles VIII and IX of the November 22, 1946 Agreement between the Salt River Valley Water Users' Association and the City of Phoenix, or interruption of deliveries or releases made necessary by maintenance, repairs, or construction to facilities, damages caused by floods, unlawful acts, accidents, emergencies, and to avoid damage to outlet facilities. In the event that such failure to deliver Verde River water is a result of hostile diversion of water, SRP, FMIC, and the United States have agreed to follow the terms of Paragraph 6.3 of the Agreement.

Insufficient supply of water shall be defined for purposes of Paragraph 6.3 of the Agreement as insufficient stored Verde River water to fill the water orders of FMIC, Rio Verde and the City of Phoenix infiltration gallery and pumps. In the event there is insufficient stored Verde River water to deliver to FMIC, SRP shall release from the Verde River reservoirs as much of the inflow to the reservoirs as is required, first, to satisfy

all water demand under the Kent Decree, and thereafter, to fill the water orders of FMIC, Rio Verde and the City of Phoenix' infiltration gallery and pumps. If insufficient inflow exists to meet all of the water orders specified in Paragraph 6.3 of the Agreement, priority of delivery shall be in accordance with the date of contract with FMIC, Rio Verde and the City of Phoenix after satisfaction of all water demand under the Kent Decree (including the FMIC entitlement under the Kent Decree).

6.4 The quantities of water to be provided from the sources identified in paragraph 6.0 of the Agreement shall be binding only on the parties to the Agreement. Except as among the parties to the Agreement, and except as to FMIC's total maximum annual water entitlement as specified in this Agreement, nothing in the Agreement shall be construed or interpreted as establishing a right to use water from the Gila River System and Source by any party to the Agreement. No party to the Agreement shall be liable to FMIC for failure to deliver water to FMIC by reason of any final judgment or decree of any court of competent jurisdiction which shall render, in whole or in part, performance of its obligation to deliver water from the sources and in the amounts specified in Paragraph 6.0 of the Agreement impossible. The preceding sentence shall be in addition to and shall not supersede or in any way alter the protections from liability for failure to store or deliver Verde River water to FMIC, set forth in Paragraph 6.3 of the Agreement, or for failure to maintain the minimum flow in the Verde River below Bartlett Dam, set forth in Paragraph 16.0 of the Agreement.

7.0 DIVERSION OF WATER

7.1 A total maximum annual diversion right of 36,350 acre-feet is provided to FMIC in the Agreement. The right consists of total diversions by or for FMIC from the Verde River less any measured return flow to the Verde River from the main FMIC canal when the return flow is maintained at a constant and continuous rate for a twenty-four hour period from midnight to midnight. The FMIC maximum annual diversion rights from the Verde River specified in Paragraphs 10.0, 11.0 and 12.0 of the Agreement (which are also identified in Paragraphs 6.1.4 - 6.1.6 thereof) are greater than FMIC's water entitlements under those Paragraphs by a factor of 1.0526 because of the agreed upon return flow accruing to the Verde River from the actual use of the water attributable to those sources on the FMIC Reservation.

7.2 All diversions by or for FMIC will be made from the Verde River above Granite Reef Dam or from groundwater pumpage on the FMIC Reservation. SRP shall fill the water order of FMIC from the Verde River as provided in Paragraphs 7.2.1 through 7.2.3 of the Agreement for the water sources described in Paragraphs 6.1.1 through 6.1.6 of the Agreement only to the extent that water is available to SRP from the Verde River to fulfill FMIC water orders as provided in Paragraph 6.3 of the Agreement.

7.2.1 SRP shall fill the water order of FMIC from the Verde River for the water source described in Paragraph 6.1.1 of the Agreement as provided in the Kent Decree and Paragraph 8.0 of the Agreement. SRP shall fill the water order of FMIC from the Verde River for the water sources described in Paragraphs 6.1.2 and 6.1.3 of the Agreement as provided in Paragraph 9.0 therein.

7.2.2 SRP shall fill the water order of FMIC from the Verde River for the water sources described in Paragraphs 6.1.5 and 6.1.6 of the Agreement to the extent exchange water credits have previously been developed by SRP on behalf of FMIC. Exchange water credits shall be developed by SRP on behalf of FMIC by multiplying the number of acre-feet of water actually received by SRP from the exchange sources described in Paragraphs 11.0 and 12.0 of the Agreement by a return flow factor of 1.0526. Exchange water credits developed by SRP on behalf of FMIC will be available for diversion by FMIC as provided in Paragraph 7.2 of the Agreement. The FMIC exchange water credits shall be limited to a maximum of 12,000 acre-feet of credits at any time, including any credits carried over from the prior calendar year. Evaporation losses will be deducted from the exchange water credits monthly by SRP at the rate of one-half of one percent of the exchange water credit balance at the end of each month. Exchange water credits shall be subject to spill as provided in paragraph 22.8 of the Agreement. SRP shall notify FMIC of exchange water credits developed, evaporation losses applied to

exchange water credit accounts, and exchange water credits spilled when such periodic accounting is performed.

7.2.3 SRP shall fill the water order of FMIC from the Verde River for the water source described in Paragraph 6.1.4 of the Agreement as provided in Paragraph 10.4 of the Agreement.

7.3 No later than March 1 of each year FMIC shall file in the Gila River Adjudication an accurate and complete annual accounting of the amount of water, identified by the specific sources described in Paragraph 6.1 of the Agreement, diverted for the FMIC Reservation, both within and outside the area described in Paragraph 9.2 of the Agreement, during the preceding calendar year. On or before April 1 of each year, SRP will reconcile the FMIC water entitlements and diversions for the previous calendar year. If FMIC diversions exceed the maximum annual diversions permitted under the Agreement as determined by this reconciliation, FMIC will reduce its diversions for the current year by the amount of such excess. Such reductions shall be deducted from FMIC's water entitlements for the current year and transferred to SRP in the following order: 1) SRP stored water as described in Paragraph 6.1.2 of the Agreement; 2) RWCD credits; 3) Kent Decree water; 4) Other Water exchange credits (if not leased); 5) CAP Allocation water exchange credits (if not leased); 6) SRP stored water as described in Paragraph 6.1.3 of the Agreement. Nothing in Paragraph 7.4 of the Agreement shall limit or otherwise restrict the parties' right to enforce the terms of the Agreement by specific performance or otherwise.

SRP will maintain a separate water account for each source of water described in Paragraph 6.1 of the Agreement. Water diversions, less return flows as provided in Paragraph 7.1 of the Agreement, by or on behalf of FMIC will be deducted from the various FMIC water account credit balances by SRP in the following order: Kent Decree daily normal flow, Verde River Spill Water, RWCD Water, Kent Decree Stored Water, SRP Stored Water for non-agricultural uses, SRP Stored Water for any use, CAP Allocation water exchange credits and Other Water exchange credits. To the extent that FMIC water orders are filled by SRP as provided in Paragraphs 7.1 and 7.2 of the Agreement and FMIC fails to divert the amount of water ordered, then the amount of water ordered in excess of diversions shall also be deducted from the FMIC water account balances as provided in the preceding sentence. SRP will provide to FMIC monthly reports showing the current credit balance in each water account at the end of the month. Not more than once every 5 years, FMIC may revise the order in which various FMIC water accounts are debited by water diversions by or on behalf of FMIC. FMIC shall notify SRP of such revisions for a given calendar year no later than July 1 of the preceding year and such revisions shall remain in effect unless and until revised again by FMIC.

8.0 KENT DECREE WATER

The parties confirm and agree to support in the Gila River Adjudication a priority date for FMIC's Kent Decree water right of 390 miners' inches (equivalent to 9.75 cubic-feet per

second or 7060 acre-feet per year if diverted or stored year round) that predates the first non-Indian priority date therein, but in no event shall the FMIC Kent Decree priority date be later than September 15, 1903. In order that FMIC may use more fully its Kent Decree water entitlement described in Paragraph 6.1 of the Agreement, the United States and SRP have agreed to provide up to 3,000 acre-feet of the existing storage space behind Bartlett and Horseshoe Dams on the Verde River in accordance with Paragraph 8.1 of the Agreement. The storage space provided will be for seasonal reregulation only, with no annual carry-over past October 1.

9.0 SRP STORED WATER

SRP shall provide 6,730 acre-feet of SRP stored water to FMIC for use solely within the area described in Paragraph 9.2 of the Agreement in accordance with Paragraph 9.0 of the Agreement.

10.0 RWCD RIGHTS AND WATER TRANSFER TO FMIC

10.1 During the term and extended term of the agreements referred to in Paragraph 10.1 of the Agreement, RWCD hereby directs SRP to deliver to FMIC 3,200 acre-feet per year from RWCD's entitlement as defined in Paragraphs 10.1 and 10.2 of the Agreement and in accordance with the terms of Paragraph 10.4 of the Agreement.

10.2 RWCD's direction for the delivery of water to FMIC pursuant to the terms of Paragraph 10.4 of the Agreement shall be binding upon its successors and assigns in accordance with Paragraph 10.5 of the Agreement.

11.0 OTHER WATER

The United States has agreed to provide 13,933 acre-feet of water in accordance with Paragraph 11.0 of the Agreement.

12.0 VERDE RIVER SPILL WATER

The parties to the Agreement recognize that some of the parties have asserted appropriative claims to the flood flow waters of the Verde River in excess of the storage capacities of SRP reservoirs on that River (Verde River Spill Water). The FMIC Verde River Spill Water Claim is based upon the alleged actual diversion and beneficial use of Verde River Spill Water through and to the extent of the capacity of the FMIC transmission and distribution system at the time of those diversions. None of the parties to the Agreement shall, by reason of their execution and performance of the Agreement, be considered to have waived any of their respective claims or objections to claims of others to Verde River Spill Water or any appropriative claims or objections to claims of others to the flood flow waters of the Salt River in excess of the storage capacities of the existing SRP reservoirs on the Salt River.

13.0 LIMITATIONS ON TRANSPORTATION AND USE OF FMIC WATER

Except as provided in Paragraph 20.0 of the Agreement, the water made available to FMIC from the various sources under the Agreement is solely for use on the FMIC Reservation. The water made available to FMIC under the Agreement may be put to any beneficial use or reuse on the FMIC Reservation without restriction except to the extent restrictions are specifically set forth in the Agreement.

14.0 MINIMUM FLOW

14.1 SRP shall maintain a minimum flow in the Verde River below Bartlett Dam by releasing no less than 100 cubic feet per second of water (measured at the U.S.G.S. gauging station immediately below Bartlett Dam) from Bartlett Dam at all times, plus the amount of water necessary to satisfy any diversion between Bartlett Dam and the confluence of the Salt and Verde Rivers, including diversions by Rio Verde, FMIC and the City of Phoenix' infiltration gallery and pumps.

14.2 The minimum flow may be interrupted because of drought, for compliance with the provisions of Articles VIII and IX of the November 22, 1946 Agreement between the Salt River Valley Water Users' Association and the City of Phoenix, made necessary by maintenance, repair, and construction to facilities, or due to accidents and emergencies. Where the minimum flow is interrupted for any of the reasons set forth in Paragraph 16.2 of the

Agreement, other than due to accidents and emergencies, SRP shall give FMIC not less than two hours advance notice of such interruptions. Where the minimum flow must be interrupted due to an accident or emergency, no advance notice need be given.

14.3 The minimum flow described in Paragraph 16.1 of the Agreement may also be interrupted prior to the completion of construction activities for modification of Roosevelt Dam as a part of the Plan 6 facilities any time the water surface elevation in Roosevelt Reservoir exceeds or is likely to exceed the target level established by the United States Bureau of Reclamation. Where the minimum flow is interrupted under these circumstances, SRP shall give FMIC six hours advance notice of such interruptions.

14.4 For the purposes of this Paragraph 14.0, drought shall be defined as any time that 1) daily total water storage in SRP reservoirs on both the Salt and Verde Rivers is less than 50 percent of normal for that month, and 2) daily total water storage in SRP reservoirs on the Verde River is less than 80,000 acre-feet during the period March through November or 60,000 acre-feet during the period December through February. Normal reservoir storage shall be defined as the median monthly storage level for the most recent 30 years.

15.0 <u>VERDE RIVER DIVERSION WORKS</u>

FMIC may divert for use on the FMIC Reservation any water to which it is entitled under the Agreement at any place within the Reservation or the lands identified in the FMIC's special permit extension application dated July 12, 1990 under which an easement was granted in perpetuity in Section 411(f) of the Act.

16.0 FMIC WAIVER OF CLAIMS

16.1 Except as provided in Paragraph 19.2 of the Agreement, FMIC, on behalf of itself and its members and the Secretary on behalf of the United States, shall execute a waiver and release of:

(a) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation from time immemorial to the date of execution of such waiver and release, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona;

(b) Any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the FMIC Reservation from and after the date of execution of such waiver and release, which FMIC and its members may have against the United States, the State of

Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(c) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the FMIC Reservation based upon aboriginal occupancy by the Indians of the Fort McDowell Indian Community, which FMIC and its members may have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

The waiver and release will be in the form set out in Exhibit "19.1" to the Agreement.

16.2 Notwithstanding the execution by FMIC of the waiver and release described in Paragraph 19.1 of the Agreement, FMIC, its members, and the United States on their behalf, shall retain the right to assert the following claims:

(a) Claims for the enforcement of FMIC's water rights as provided for in the Agreement, including rights based on the Kent Decree under the continuing jurisdiction of the Court in the Gila River Adjudication.

(b) Claims against any person for the breach or enforcement of the terms of the Agreement or rights recognized therein.

(c) FMIC and or the United States on behalf of FMIC may assert a claim to Verde River Spill Water in the Gila River Adjudication as provided in Paragraph 13 thereof.

16.3 Any entitlement to water of any individual member of the FMIC for lands within the FMIC Reservation shall be satisfied out of the water resources provided to FMIC in the Agreement.

16.4 Except as provided in Paragraph 19.2 of the Agreement, the United States shall not assert any claim against the State of Arizona and any agency or political subdivision thereof or any other person, corporation, or municipal corporation, in its own right or on behalf of FMIC and its members based upon (1) water rights or injuries to water rights of FMIC and its members; or (2) water rights or injuries to water rights held by the United States on behalf of FMIC and its members.

16.5 The United States or FMIC shall be permitted to support any claim of any party to the Agreement filed in the Gila River Adjudication from which FMIC's water rights under the Agreement are derived.

16.6 FMIC shall dismiss all water-related litigation pending in Federal or State courts in which FMIC is a plaintiff or which has been brought on behalf of FMIC.

16.7 Nothing herein shall prevent FMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley.

17.0 OTHER PROVISIONS

17.1 Disclaimer - Nothing in the Agreement or in this Stipulation shall be construed as establishing any standard to be used for the quantification of federal reserved rights, aboriginal claims, or any other Indian water claims in any judicial or administrative proceeding.

17.2 Enforceability Date and Related Matters

17.2.1 The Agreement shall be effective and binding when it has been executed by all parties thereto and when the parties to the Agreement have executed all Exhibits to the Agreement which call for their signatures. Other than to take all steps necessary to cause the events described in the Paragraph 22.5.1 thereof to occur, no party to the Agreement shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under the Agreement or under any of the Exhibits until such time as the authorization in Section 409(b) of the Act has become effective (the "enforceability date").

In the event the authorization in Section 409(b) of the Act has not become effective by the date indicated in Section

412(b) of the Act, the Agreement shall be of no further force or effect.

17.2.2 Exhibit "2.1" to the Agreement is the Act of Congress which authorizes the federal action required to carry out the Agreement. Any Act of Congress which materially amends the Act set forth in Exhibit "2.1" to the Agreement prior to the enforceability date of the Agreement without the written consent of the parties adversely affected by the amendment shall relieve all parties to the Agreement of their obligations thereunder.

17.2.3 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving this Stipulation and no further appeal may be taken, the parties to the Agreement shall:

(a) Perform all of their respective obligations under the Agreement, unless otherwise ordered by a court of competent jurisdiction; and

(b) Permit FMIC and its members, and the United States on their behalf, to assert in the Gila River Adjudication claims for water rights to the waters of the Gila River System and Source in addition to the 36,350 acre-feet of water available as a total maximum annual diversion right to FMIC under the Agreement, and the other parties to the Agreement agree not to assert

any defense to such claims against FMIC and the United States, including, inter alia: (1) That FMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of FMIC; and (2) That the practicably irrigable acreage standard set forth in Arizona v. California does not apply to the FMIC Reservation; however, FMIC and the United States agree that a reserved right up to 36,350 acre-feet will be satisfied as provided in the Agreement, and that if a right in excess of 36,350 acre-feet is awarded, the excess of such right will not be exercised, in any phase of the Gila River Adjudication or any subsequent proceedings, against junior rights to the waters of the Gila River System and Source held by other parties to the Agreement and the water rights appurtenant to shareholder lands within the SRRD.

17.2.4 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving this Stipulation to the Agreement, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered any single party to the Agreement not to perform an obligation to deliver water to FMIC as provided in the Agreement,

(a) All other parties to the Agreement shall perform all of their respective obligations under the Agreement, unless otherwise ordered by a court of competent jurisdiction;

(b) The party ordered not to perform an obligation to deliver water to FMIC as provided in the Agreement shall perform all of its remaining obligations, if any, under the Agreement; that party shall be relieved of its obligations under the Agreement only to the extent necessary to comply with the Court's Order; and

(c) FMIC and its members, and the United States on their behalf, may assert in the Gila River Adjudication claims for water rights to the waters of the Gila River System and Source in addition to the 36,350 acre-feet of water available as a total maximum annual diversion right to FMIC under the Agreement, and the other parties to the Agreement agree not to assert any defenses to such claims against FMIC and the United States, including inter alia: (1) That FMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of FMIC; and (2) That the practicably irrigable acreage standard set forth in Arizona v. California does not apply to the FMIC Reservation; however, FMIC and the United States agree that a reserved right up to 36,350 acre-feet will be satisfied as provided in the Agreement, to the extent not precluded by an order of a

court of competent jurisdiction as provided in Paragraph 22.5.4 of the Agreement, and that if a right in excess of 36,350 acre-feet is awarded, the excess of such right and the amount of any FMIC right under the Agreement which has been enjoined as provided in Paragraph 22.5.4 of the Agreement will not be exercised, in any phase of the Gila River Adjudication or in any subsequent proceedings, against junior rights to the waters of the Gila River System and Source held by other parties to the Agreement and the water rights appurtenant to shareholder lands within the SRRD.

17.2.5 In the event the authorization contained in Section 409(b) of the Act has become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving this Stipulation to the Agreement, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered more than one of the parties to the Agreement not to perform an obligation to deliver water to FMIC as provided in the Agreement, then, unless otherwise agreed by FMIC, the Agreement shall be null and void and, except as provided in Paragraph 19.7 thereof and in Paragraph 22.5.5, all parties shall be relieved of their obligations under the Agreement. All funds appropriated pursuant to Section 408 of the Act which have not been expended by FMIC shall revert to the Treasury of the United States and any funds appropriated by the State of Arizona pursuant to Paragraph 21.3 of the Agreement which have not been expended by FMIC shall

revert to the State of Arizona. If FMIC has expended some of the funds appropriated by the United States and the State, the remaining funds shall be apportioned between the United States and the State in proportion to their respective contributions to the FMIC Development Fund pursuant to these Sections of the Act and the Agreement. Within 180 days of Paragraph 22.5.5 of the Agreement taking effect, FMIC shall also reimburse the City of Phoenix for any and all sums paid by the City of Phoenix to FMIC as consideration for any lease of water pursuant to Paragraph 20.0 thereof, together with interest as provided in Paragraph 22.5.5 of the Agreement.

17.3 The water rights of FMIC under the Agreement are acquired in trust by the United States for the benefit of FMIC to be held as other Indian rights are held.

17.4 The Agreement shall inure to the benefit of and be binding upon the successors of the parties thereto.

17.5 Pursuant to a court ordered and approved procedure, the total maximum annual water entitlement of FMIC and its members, as specified in the Agreement and this Stipulation, shall become binding and have the full effect of a valid legal judgment as against all persons who were entitled to file a statement of claimant in these consolidated proceedings. However, the quantities of water to be provided from the sources specified in this Stipulation and in the Agreement to satisfy FMIC's total maximum annual water entitlement, as specified in the Agreement

and this Stipulation, shall be binding only on the parties to this Stipulation and to the Agreement until such time as the entitlements to such sources and quantities of water are adjudicated and incorporated into a final decree that binds all parties. Except as among the parties to this Stipulation and to the Agreement and except as to FMIC's annual water entitlement, as specified in the Agreement and this Stipulation, nothing in this Stipulation or in the Agreement shall be construed or interpreted as establishing a right to use water from the Gila River System and Source by any party to this Stipulation or to the Agreement.

17.6 If for any reason this Court fails to approve this Stipulation and Judgment, this Stipulation shall not bind any of the undersigned parties. If the Court approves this Stipulation and the judgment of this Court is reversed on appeal and no further appeal may be taken, the rights and obligations of the parties shall be as stated in the Agreement.

17.7 Nothing in this Stipulation or the Agreement shall prohibit or restrict any undersigned party from fully pursuing its claims in these consolidated proceedings, consistent with this Stipulation and the Agreement.

17.8 The Court shall direct the entry of final judgment in the form attached hereto because there is no just reason for delay and the partial judgment is properly final judgment pursuant to Rule 54(b), Arizona Rules of Civil Procedure.

17.9 This Stipulation is not intended to supersede any term of the Agreement. In the event any of the terms of this Stipulation shall vary or conflict with any of the terms of the Agreement, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Stipulation as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Attorneys for the United States of America

By: _____
Attorneys for the United States of America

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Douglas K. Miller
Arizona Bar #005264

FORT MCDOWELL INDIAN COMMUNITY

By: _____ RD
Arlinda F. Locklear

By: _____
Richard Dauphinais

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: John B. Weldon
John B. Weldon, Jr.
Arizona Bar #003701

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By: John B. Weldon
John B. Weldon, Jr.
Arizona Bar #003701

ROOSEVELT WATER CONSERVATION DISTRICT

By: Richard h. Morrison #005269
for Michael J. Brophy
Arizona Bar #004952

CITY OF PHOENIX

By: M James Callahan
M. James Callahan
Arizona Bar #004138

CITY OF SCOTTSDALE

By: Margaret Wilson
Barbara R. Goldberg
Arizona Bar #010252

CITY OF GLENDALE

By: James M. Flenner
James Flenner
Arizona Bar #004045

CITY OF MESA

By: Stephen J. Burg for
Bradford T. Brown
Arizona Bar #009034

CITY OF TEMPE

By: Karen S Gaylord
Karen Gaylord
Arizona Bar #010621

CITY OF CHANDLER

By: Cynthia Haglin
Cynthia Haglin
Arizona Bar #010905

TOWN OF GILBERT

By: William Sullivan
William Sullivan
Arizona Bar #005956

FMICFNL\STATESTP.FNL
03/23/93

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	)	W-1; W-2; W-3; W-4
	)	JUDGMENT

The claims asserted herein by the Fort McDowell Indian Community and by the United States of America on behalf of the Community having been resolved by stipulation and agreement among the interested parties, this Court having reviewed and considered the substance of said stipulation and agreement, and other parties to this action having been given an opportunity to be heard on this matter,

It is Ordered and Adjudged:

In accordance with the foregoing Stipulation, the Court hereby approves and adopts the Stipulation dated _____, as its decree of the total maximum annual diversion right of the Fort McDowell Indian Community in the waters subject to this proceeding which shall be incorporated into the final decree herein without further order, and which shall, upon entry of the final decree herein, have the same force and effect as against other water rights as those adjudicated by the court. The water rights of contributing parties to the

Agreement shall be determined in the due course of this proceeding. The final decree herein shall set forth the water rights of said contributing parties, and shall reflect their contractual obligations to provide water to the Fort McDowell Indian Community under the Agreement.

The Court herein determines that there is no just reason for delay and the partial judgment is properly final pursuant to Rule 54(b), Arizona Rules of Civil Procedure.

Wherefore, the Court directs the entry of judgment, pursuant to the provisions of Arizona Rules of Civil Procedure 54(b).

Dated at Phoenix, Arizona, this ____ day of _____, 19__.

_____
Judge, Superior Court

FMIC EXHIBIT 19.6.1

FEDERAL COURT MOTION AND JUDGMENT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Fort McDowell Mohave-Apache Indian Community, for and on behalf of itself and its members, Plaintiff, v. Salt River Valley Water Users' Association; Salt River Project Agricultural Improvement and Power District; City of Phoenix; City of Prescott; City of Jerome; Phelps Dodge Corporation; Phelps Dodge Industries, Inc.; Arizona Water Company; Miller Brothers Farms, Inc.; Camp Verde Water Systems; Cottonwood Water Works, Inc.; Copper Basin Water Co.; V Bar V Cattle Co., Inc.; Harold W. Bullard; and the State of Arizona, individually and as representative of a class composed of all others similarly situated, Defendants	CIV 79-267 PHX RGS MOTION FOR LEAVE TO DISMISS WITH PREJUDICE

Comes Now Plaintiff Fort McDowell Indian Community and moves the Court for leave to dismiss this complaint with prejudice. In support of its motion, plaintiff states:

1. Plaintiff filed this defendant class action to obtain a determination of its water rights, including but not limited to its federally reserved water rights, in and to the Verde River waters

and other incidental rights. Before certification of the defendant class and any other proceedings herein, this action was stayed by direction of the United States Supreme Court, pending the final outcome of a general stream adjudication of the Verde and other rivers captioned In the General Adjudication of all Rights to Use Water in the Gila River System and Source, in the Superior Court of the State of Arizona in and for the County of Maricopa, W-1, W-2, W-3, W-4 (referred to herein as Gila River General Stream Adjudication). See Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187 (9th Cir. 1983).

2. In 1985, plaintiff decided to attempt an out of court settlement of the claims asserted herein. Since that time, plaintiff has engaged in negotiations with the Salt River Valley Water Users' Association, Salt River Project Agricultural Improvement and Power District, the City of Phoenix, and the State of Arizona, and unnamed members of the defendant class including the Roosevelt Water Conservation District, and the Arizona cities of Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert. Throughout these negotiations, plaintiff was represented by the undersigned counsel and by the United States in its capacity as trustee for the Fort McDowell Indian Community.

3. After five years of negotiations, the parties agreed upon settlement terms, which terms were ratified and approved by Congress in the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628. The complete terms of settlement are reflected in an Agreement among the parties dated _____ and attached hereto.

4. The parties to the settlement, including plaintiff, submitted the Agreement for approval in the Gila River General Stream Adjudication, pursuant to the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, Dated May 16, 1991, a copy of which Special Procedural Order is attached hereto. This procedural order requires notice of and the opportunity to object to the general settlement terms to all parties in the general stream adjudication. The required notice apprised all Verde River Water claimants of the general terms of settlement. A copy of this notice is attached hereto. Furthermore, the order of the Maricopa County Superior Court to such claimants afforded those parties an opportunity to present any objections to the Settlement Agreement. A copy of this court order is also attached hereto.

5. The uncertified defendant class in this action is described as all properly served potential claimants to waters in the Verde River watershed. For all practical purposes, the uncertified defendant class herein consists of all those parties who were served with a copy of the summons in the Gila River General Stream Adjudication including those who have filed Statements of Claimant to the Verde River and who have received notice of and opportunity to comment upon the Settlement Agreement therein.

6. The Settlement Agreement provides for a total maximum annual diversion right of the plaintiff and its members of 36,350 acre feet, with the exceptions of Verde River spill water as defined in Paragraph 13.0 of the Agreement and reuse permitted by

Paragraphs 5.0 and 15.0 of the Agreement. This total maximum annual diversion right shall be incorporated into the final judgment in the Gila River General Stream Adjudication and shall have the full effect of a valid legal judgment as against all parties to the Gila River Adjudication.

7. The Settlement Agreement was arrived at by plaintiff and other settlement parties after five years of arms length negotiations and is not the product of fraud or overreaching by, or collusion among, the negotiating parties.

8. The terms of the Settlement Agreement, taken as a whole, are fair, reasonable, and adequate to finally and completely resolve the claims of plaintiff herein as against all named and unnamed members of the defendant class.

WHEREFORE, plaintiff moves this Court to dismiss its complaint with prejudice.

Dated this __ day of _____, 1993

_____
Richard Dauphinais
Arlinda Locklear
Native American Rights Fund
1712 N St., N.W.
Washington, D.C. 20036
(202) 785-4166

_____
Gary L. Thomas #003877
1640 West Thomas
Phoenix, Arizona 85015
(602) 248-0198

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Fort McDowell Mohave-Apache Indian Community, for and on behalf of itself and its members, Plaintiff, v. Salt River Valley Water Users' Association; Salt River Project Agricultural Improvement and Power District; City of Phoenix; City of Prescott; City of Jerome; Phelps Dodge Corporation; Phelps Dodge Industries, Inc.; Arizona Water Company; Miller Brothers Farms, Inc.; Camp Verde Water Systems; Cottonwood Water Works, Inc.; Copper Basin Water Co.; V Bar V Cattle Co., Inc.; Harold W. Bullard; and the State of Arizona, individually and as representative of a class composed of all others similarly situated, Defendants	CIV 79-267 PHX RGS JUDGMENT

The claims asserted herein by the Fort McDowell Indian Community have been resolved by Agreement among the interested parties and the members of the uncertified defendant class herein have been given notice and opportunity to be heard on the Agreement in a proceeding conducted by the Maricopa County Superior Court in the Gila River Adjudication (W-1; W-2; W-3; W-4), pursuant to the Arizona Supreme Court's Special Procedural Order Providing For The Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991.

This Court having reviewed the adequacy of representation of the class in the negotiations leading to the Agreement, the adequacy of notice to and opportunity to be heard by the class members on the Agreement, and the general fairness of the terms of the Agreement, which is on file in this proceeding.

IT IS HEREBY ORDERED AND ADJUDGED;

That this Court hereby determines that the Agreement dated _____, 1991, is not the product of fraud or overreaching by, or collusion among, the negotiating parties and that the terms therein, taken as a whole, are fair, reasonable and adequate to all concerned parties;

That this Court approves the Agreement as finally and completely resolving on the merits all claims asserted herein by the Fort McDowell Indian Community;

That this action is hereby dismissed with prejudice.

Dated this ___ day of _____, 1993

_____
United States District Court Judge

FMIC EXHIBIT 19.6.2

COURT OF FEDERAL CLAIMS STIPULATION

UNITED STATES COURT OF FEDERAL CLAIMS

FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY, for and on behalf of itself and its members, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendants.	)	Docket No. 753-88-L **STIPULATION FOR DISMISSAL WITH PREJUDICE**

The parties advise the Court that plaintiffs' claims have been satisfied and released pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of November 28, 1990, 104 Stat. 4480. Accordingly the parties stipulate to an order dismissing with prejudice plaintiffs' Complaint.

DATED this ___ day of _____, 1993

Respectfully submitted,

Richard Dauphinais
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
(303) 447-8760

Attorney for the Fort McDowell Indian Community

R. Anthony Rogers
General Litigation Section
Env. and Natural Res. Div.
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20044-0663
(202) 272-8135

Attorney for the United States

IT IS SO ORDERED

DATED this __ day of _____, 1993

Honorable Christine C. Nettisheim

FMIC EXHIBIT 19.6.3

FTCA DISMISSAL

_____, 1993

William Barr, Attorney General
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Secretary of the Interior
U.S. Dept. of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Bureau of Reclamation
U.S. Dept. of the Interior
23636 N. 7th Street
Phoenix, Arizona 85204

Asst. Secretary Admin.
Dept. of Housing & Urban Dev.
451 Seventh Street, S.W.
Washington, D.C. 20410

U.S. Attorney Office
U.S. Dept. of Justice
230 N. 1st Ave.; Room 4000
Phoenix, Arizona 85015-0090

William Swan, Esq.
Office of the Field Solicitor
2 N. Central, Suite 500
Phoenix, Arizona 85004

Re: Fort McDowell Indian Community - Filing under the Federal Tort Claims Act

Dear _____:

In December, 1988, the Fort McDowell Indian Community filed, with the offices listed above, a notice of claims under 28 U.S.C. §2675. Pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. 101-628, Title IV, 104 Stat. 4480, the Community hereby dismisses those Federal Tort Claims Act claims.

Sincerely,

Richard Dauphinais

FMIC EXHIBIT 20.1.3

Terms and Conditions of Project Water Lease Agreements

Exhibit 20.1.3

Terms and Conditions of Project Water Lease Agreements

1. Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance, and replacement ("OM&R") costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract.

2. Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to a degree greater than deliveries of such Project Water to the Salt River Project CAP Turnout. Subject to the provisions of this Project Water Lease Agreement, the United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United

States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3. Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

4. Conditions Relating to Delivery and Use. The Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including, but not limited to, groundwater recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles and articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. The Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be

made under that Repayment Contract, except as otherwise provided herein.

5. Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

6. Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

7. Lessor's Covenants. The Lessor agrees to observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired.

8. Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, that the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned

or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, that the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of the Lessor. The Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of the Lessee's entitlement under this Project Water Lease Agreement.

9. CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Project Water Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

FIRST AMENDMENT TO
CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND
THE FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY

1. PREAMBLE:

THIS AMENDMENT TO CONTRACT, made this 15th day of January, 1993, in pursuance of the Fort McDowell Mohave-Apache Indian Community Water Rights Settlement Act of 1990, P.L. 101-628, 104 Stat. 4480, is between the United States of America (hereafter "United States") and the Fort McDowell Mohave-Apache Indian Community (hereafter "Contractor") located on the Fort McDowell Reservation, Arizona.

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the United States and the Contractor entered into a contract dated December 11, 1980, pursuant to which the United States agreed to deliver Central Arizona Project water in an amount not in excess of 4,300 acre-feet yearly for a term of 50 years subject to renewal (hereafter "CAP Delivery Contract");

WHEREAS, the United States, the Contractor, the State of Arizona, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, and the Central Arizona Water Conservation District, have entered into the Fort McDowell Water Rights

Settlement Agreement dated as of January 15, 1993 (the "FMIC Agreement"), for the settlement of water claims in the Salt River Valley; and

WHEREAS, the FMIC Agreement provides in Paragraph 20.0 that the Contractor will lease for a term of 99 years commencing on January 1, 2001, and ending on December 31, 2099 to the City of Phoenix, Arizona, all of the water to which the Contractor is entitled under the CAP Delivery Contract; and

WHEREAS, the United States confirmed the FMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Contractor's rights to 4,300 acre-feet of Project Water to the City of Phoenix, Arizona; and

WHEREAS, the parties intend by this First Amendment to the CAP Delivery Contract to amend the CAP Delivery Contract as required by the Fort McDowell Indian Community Water Rights Settlement Act of 1990;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements between the parties, it is agreed as follows:

3. Paragraph 4.2 of the CAP Delivery Contract is amended in full to read as follows:

> "4.2 Term of Contract. This Contract shall become effective upon its execution and shall remain in effect until and including December 31, 2099; Provided, that this Contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract."

4. Paragraph 4.3(e) shall be amended by adding a new 4.3(e)(3) as follows:

"(3) The Contractor may enter into a Project Water Lease Agreement with the City of Phoenix, Arizona for a term commencing January 1, 2001, and ending December 31, 2099, in accordance with the Project Water Lease Agreement entered into among the Contractor, the City of Phoenix, Arizona and the United States. The United States shall deliver Contractor's Project Water to the City of Phoenix, Arizona as provided in the Project Water Lease Agreement with said city; however, neither the Secretary nor CAWCD shall be obligated to make such deliveries if, in the judgment of the CAWCD or the Secretary, delivery or schedule of deliveries to the City of Phoenix, Arizona would limit deliveries of CAP water to other CAP subcontractors to a degree greater than would deliveries to Contractor. To the extent that the provisions of the Project Water Lease Agreement are contrary to the provisions of this contract, the provisions of the Project Water Lease Agreement shall control."

5. Paragraph 6 shall be amended by adding a new Paragraph 6(e) as follows:

"(e) The United States shall not impose upon the Contractor the OM&R charge set forth in Section 6(b) or any other charge with respect to the Project Water delivered or required to be delivered to the City of Phoenix, Arizona pursuant to Paragraph 4.3(e)(3) hereof."

6. Section 8 shall be amended by adding a new Section 8.11 as follows:

"8.11 Amendments and Modifications. No amendment or modification of this Contract shall be made which would impair the interests of the City of Phoenix, Arizona under the Project Water Agreement unless the City of Phoenix, Arizona gives written approval for such amendment or modification."

7. The CAP Delivery contract will be amended further to provide for delivery of an additional 13,933 acre-feet of water yearly. The additional water will be acquired by the United States in accordance with Section 406 of the

Fort McDowell Indian Community Water Rights Settlement Act of 1990. Pub. L. 101-628, Title IV, 104 Stat. 4480 (1990) and Paragraph 11.0 of the FMIC Agreement dated January 15, 1993.

8. This First Amendment to the CAP Delivery Contract shall become effective after execution and on the enforceability date of the FMIC Agreement as set forth in Paragraph 22.5 thereof.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the CAP Delivery Contract on the date written above.

THE UNITED STATES OF AMERICA

By: _____
Office of the Secretary

FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY

Attest: _____
Secretary

By: _____
Name:

Title:

FMIC EXHIBIT 20.1.6

FMIC CAP WATER DELIVERY CONTRACT AMENDMENT

FMIC EXHIBIT 20.1.7

CITY OF PHOENIX

PROJECT WATER LEASE AGREEMENT

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made this _____ day of _____, 19____, is between the United States of America (hereinafter "United States"), the Fort McDowell Indian Community (hereinafter "FMIC") and the City of Phoenix, Arizona (hereinafter "Phoenix"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Fort McDowell Indian Community Water Rights Settlement Agreement dated as of _____, ____ (the "FMIC Agreement");

WHEREAS, Paragraph 20.0 of the FMIC Agreement obligates the United States, the FMIC and Phoenix to enter into an agreement for the lease by the FMIC to Phoenix of Project Water to which the FMIC is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of November 28, 1990, 104 Stat. 4480 (the "Authorizing Legislation"), the United States confirmed the FMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the FMIC's rights to Project Water to Phoenix; and

WHEREAS, pursuant to the FMIC Agreement and the Authorizing Legislation, the United States and the FMIC have executed a First Amendment to the CAP Delivery Contract which authorizes the FMIC to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The FMIC leases to Phoenix the right to the delivery of 4,300 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2001, and end on December 31, 2099.

3.3 Phoenix's Payment for Lease. Phoenix shall pay FMIC a sum as calculated herein as consideration for this Project Water Lease Agreement. The consideration shall consist of a base payment adjusted in direct proportion to any change in the U.S. All Items Consumer Price Index for All Urban Consumers (CPI-U) for the West Region in the period of time hereinafter specified.

The base payment is $5,172,900. The base index for the adjustment of that payment will be the CPI-U closest in time to December 9, 1991, the date Phoenix made its payment to the Salt River Pima Maricopa Indian Community (SRPMIC) for the lease of SRPMIC's CAP water.

Adjustment of the base payment will be determined by multiplying the base payment, $5,172,900.00, by the fraction in which the numerator is the CPI-U closest in time to the date Phoenix makes its initial payment to FMIC and the denominator is the base index.

Example:

A = CPI-U closest in time to the date Phoenix makes its initial payment to FMIC under this Project Water Lease Agreement

B = CPI-U closest in time to December 9, 1991

A/B x (times) $5,172,900.00

= the adjusted consideration

In the event the index specified above is discontinued or not otherwise available, comparable statistics on the purchasing power of the consumer dollar as agreed upon between Phoenix and FMIC shall be substituted for the index specified above in making the adjustment required by this Paragraph 3.3. In the event the parties are unable to mutually agree upon such substitute statistics, the matter shall be submitted to arbitration.

The City of Phoenix, ten days after the effective date of this Agreement, shall elect to pay this consideration by (i) payment of the entire consideration on the date of initial payment or, (ii) payment of one-half the consideration on the date of initial payment and the balance in four (4) equal annual payments, payable on the next four anniversary dates of the date of initial payment, together with interest on the unpaid balance at the annual rate of one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Revenue Refunding Bonds, Series 1986, as determined on the effective date of this Agreement.

Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. Without any prepayment penalty, Phoenix may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

The date of initial payment shall be the tenth day after the effective date of this lease agreement or the tenth day after the time expires under the Arizona Supreme Court's Special Procedural Order Providing for Interlocutory Appeals to file an interlocutory appeal from the judgment of the Superior Court of Arizona in and for Maricopa County approving the FMIC Agreement, whichever occurs later; provided, however, that no such interlocutory appeal is filed.

If one or more interlocutory appeals is filed from the judgment approving the FMIC Agreement, then the date of initial payment shall be ninety days after a decision has been rendered, from which no further appeal may be taken, which fully disposes of any and all such interlocutory appeals; provided, however, that this Project Water Lease Agreement continues to be enforceable in light of the decision(s).

If, on January 1, 2001, any appeal from the judgment approving the FMIC Agreement remains pending or further appeal is possible, Phoenix, in its sole discretion, may designate January 1, 2001 as the date of initial payment.

In no event shall Phoenix have a right under this Project Water Lease Agreement to the delivery of water in advance of the date of initial payment.

3.4 Operation, Maintenance and Replacement Costs.

Phoenix shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of Phoenix's CAP M&I Water Service

Subcontract. Phoenix's obligation to pay such charges is defined to be and is limited to the payment of all operation, maintenance and replacement costs associated with Project Water scheduled for delivery by Phoenix plus any operation, maintenance and replacement costs of a type which, prior to October 1, 1999, were required to be paid under the FMIC CAP Delivery Contract or had been paid or assumed by FMIC or the United States and, in the absence of this Project Water Lease Agreement, would continue to be paid or assumed by FMIC or the United States with respect to Project Water to which FMIC is entitled under the CAP Delivery Contract but which was not scheduled for delivery. Phoenix's obligation to pay water service charges for operation, maintenance and replacement costs shall not begin earlier than October 1, 1999.

3.5 Other Charges or Payments. Phoenix shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. Phoenix shall pay any charges or payments imposed against the FMIC with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the FMIC's Project Water to Phoenix as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to Phoenix would limit deliveries of CAP water to other CAP subcontractors to a degree greater than deliveries to the FMIC. The United States or

CAWCD shall deliver water to Phoenix in accordance with water delivery schedules provided by Phoenix to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of Phoenix's CAP M&I Water Service Subcontract shall apply to Phoenix's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to Phoenix from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of Phoenix's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if Phoenix agrees to accept such increased deliveries.

3.7 Use of Project Water Outside Reservation. Phoenix may use or deliver Project Water for use outside the boundaries of the reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Phoenix shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including groundwater recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to Phoenix and its use by Phoenix shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of Phoenix's CAP M&I Water Service

Subcontract. During the term of this Project Water Lease Agreement, the following subarticles and articles of Phoenix's CAP M&I Water Service Subcontract shall apply to Phoenix and to Phoenix's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Phoenix expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by Phoenix pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the Secretary's right to control return flow as provided in Article 4.8 of Phoenix's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to Phoenix pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts which have been constructed by the United States at such points on the Water Supply System as were agreed upon by the Contracting Officer and Phoenix in accordance with the provisions of Article 4.5 of Phoenix's CAP M&I Water Service Subcontract.

3.11 FMIC's Covenants. The FMIC agrees:

(A) To observe and perform all obligations imposed on the FMIC under the CAP Delivery Contract which are not assumed by Phoenix so that Phoenix's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the FMIC's right to the delivery of Project Water under the CAP Delivery Contract which would impair Phoenix's rights and duties hereunder;

(C) Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair Phoenix's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of Phoenix hereunder; and

(D) Not to terminate or cancel the CAP Delivery Contract or transfer, convey, assign or permit a transfer, or conveyance or assignment of the Contract or of the right to take delivery of water under the Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Phoenix Assignment. Phoenix may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the FMIC and the Secretary; Provided, That Phoenix shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which Phoenix is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by Phoenix for an amount in excess of that which Phoenix paid for such water

under this Project Water Lease Agreement, the excess amount shall be paid forthwith by Phoenix to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That Phoenix shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. Phoenix shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the FMIC without the prior written approval of FMIC. Phoenix shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Phoenix's entitlement under this Project Water Lease Agreement.

Approval is hereby granted by the Secretary and FMIC to Phoenix for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe, and the Arizona town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the

costs associated with the delivery of water pursuant to this Project Water Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the FMIC Agreement as set forth in Paragraph 22.5 thereof.

4.3 Effect of FMIC Agreement. On the enforceability date of the FMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the FMIC and Phoenix notwithstanding the performance or non-performance of other provisions of the FMIC Agreement not related to this Project Water Lease Agreement. The provisions of the FMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 20.0 of the FMIC Agreement.

4.4 Invalidity of the Agreement. If Phoenix's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of Phoenix with the result that the FMIC reacquires the right to receive the Project Water, then the FMIC shall refund to Phoenix that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term together with interest as provided in Paragraph 22.5.5 of the FMIC Agreement.

In the event a dispute arises under this Paragraph 4.4, FMIC and Phoenix agree to submit the dispute to binding arbitration and

further agree to waive any claim of sovereign immunity for such arbitration and for any enforcement proceedings thereafter in a court of competent jurisdiction.

4.5 Curing for Phoenix's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, Phoenix shall be in default and the FMIC shall give written notice of default to Phoenix. Notice shall be given in the manner and to the city officer specified in Paragraph 22.17.b of the FMIC Agreement. The notice of default shall specifically describe the default and state the amount due by Phoenix ("Default Amount"). After notice of default, the rights of Phoenix and the FMIC shall be as follows:

A. During the first thirty (30) days following the notice of default ("Grace Period"), Phoenix shall have the exclusive right to cure any such default by tendering the Default Amount to FMIC together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the Grace Period, Phoenix may cure only by tendering the Default Amount.

B. After notice of default and after failure to cure as provided for in Paragraph 4.5.A. and B. hereof, Phoenix will be indebted to the FMIC in the amount of $5,172,900, adjusted in accordance with Paragraph 3.3 hereof, less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the FMIC will be entitled to judgment for such an amount.

Payment of the amount provided in this subparagraph shall constitute full performance of Phoenix's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By_____ By_____
Bureau of Indian Affairs Bureau of Reclamation

Attest: THE FORT MC DOWELL INDIAN COMMUNITY

_____

By_____
Name:_____
Title:_____

Attest: CITY OF PHOENIX, an Arizona municipal corporation

_____
City Clerk

Approved as to form: By_____
Name: Frank Fairbanks
Title: City Manager

_____
City Attorney

FMIC EXHIBIT 22.6

1977 REPORT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PATRICK T. HURLEY, Plaintiff,	)	NO. C-4564
UNITED STATES OF AMERICA, Intervenor,	)	WATER COMMISSIONER'S REPORT
vs.	)	
CHARLES F. ABBOTT; et al., Defendants.	)	

The undersigned, A. L. Monette, heretofore having been selected and designated as the Water Commissioner to execute and carry out the provisions of the Decree herein and report to the Court with reference thereto, respectfully submits the following Report for the Court's information:

I

The Salt River Valley Water Users' Association (hereinafter referred to as the "Association"), by contracts with the United States Government of June 25, 1904, and September 6, 1917, operates the Salt River Federal Reclamation Project (hereinafter referred to as the "Salt River Project"), and delivers water pursuant to and in accordance with the Decree of the Court heretofore entered herein and commonly referred to as the "Kent Decree". The Association has, as provided for in such decree, reported to, or made its records available to, the Water Commissioner as to the operation and maintenance of the Salt River Project and the distribution of water administered by the Association under the authority of the Water Commissioner and the Kent Decree.

II

The Association has heretofore reported to the Water Commissioner that it has entered into contracts with the City of Phoenix, the City of Mesa, the City of Scottsdale, the City of Tempe, the City of Glendale, the City of Peoria, the City of Chandler and the Town of Gilbert, all of which are municipalities lying within the Salt River Reservoir District, the service area of the Association; in view of the expanded urban development within the Reservoir District of the Salt River Project land area, the Salt River Project now provides a major portion of the total domestic, commercial and industrial water supply needed by the municipal population of the above Cities; this water supply and delivery is made possible by virtue of contracts between the Cities and the Association, each of which has been approved by the Secretary of the Interior of the United States, whereby the Cities pay the Association the annual assessment owed by each landowner on lands that have become urbanized and are no longer utilized for agricultural purposes; the water to which these lands are entitled, including normal flow, stored and developed, surface and underground water is delivered by the Association to the Cities' water filtration plants for use on regular member and townsite lands within the Reservoir District, primarily for municipal and industrial purposes; the Cities are contracting parties with the Association (or propose to become contracting parties with the Association) in order that each municipality contracting with the Association may make available to the owners or occupants of Association-member lands water available for beneficial use in connection with such lands, all as will be further described herein.

III

The use of water by members of the Association in connection with their respective parcels of regular member

lands and townsite lands has changed as valley lands have been urbanized, as the population of the area has increased and as municipal water sources have changed; as agricultural uses of member lands have changed to uses for residential, commercial, industrial and municipal uses, in like manner the water uses appurtenant to such lands have accordingly changed; the water distribution facilities of the Association were originally developed for the purpose of delivering irrigation water to the high point of each quarter section; without filtration and further treatment, the water delivered by the Association is not adaptable for urban and municipal uses other than urban and municipal irrigation uses; at the same time, the owners and occupants of these member lands require a water supply for the beneficial uses for which the lands have been and are now being adapted and used.

IV

The regular member lands lying within the Reservoir District are becoming urbanized and reliable forecasts indicate that this urbanization will continue; the water which has been made subject to the water delivery contracts between the Association and the Cities, and which will, in the future, progressively be delivered by the Cities for domestic, commercial and industrial uses, has been and will continue to be put to beneficial use; the uses now being made and which will be made of the water in the future will not lawfully interfere with any other existing water rights; the Water Commissioner hereby reports the changes in use of water from agricultural to municipal and industrial, and the city domestic uses for certain lands within the confines of the Salt River Reservoir District, as shown on the attached Exhibit "A".

V

In the decree entered herein it is provided that the Water Commissioner shall supervise the proper * * * distribution of the water to be diverted by the canals under the said decree * * * in accordance with the rights of the persons entitled thereto as found by the decision and decree herein.

In the decree it is further provided in part as follows:

> "Commissioner shall * * * apply to the judge of the court for such further or specific directions as to his powers and duties whenever such directions shall be necessary or proper for the effective carrying out of the provisions of the decree herein."

Your Commissioner respectfully requests that the court give specific directions as to his duties in respect to the proper distribution of water to the lands affected by the aforesaid contracts and specifically described in the tables attached hereto, in view of the changes in delivery and use under said contracts.

VI

The Water Commissioner respectfully requests the court to give notice of the filing of this report to representatives of all interested parties, viz, City of Phoenix, City of Mesa, City of Scottsdale, City of Tempe, City of Glendale, City of Peoria, City of Chandler, Town of Gilbert, the United States and the Salt River Valley Water Users' Association. The Water Commissioner respectfully requests that the court fix a time within which the interested parties may file objections or other response to the report and that a time and place be fixed by the court for considering the report and all objections or other responses thereto and that appropriate notice be ordered to all interested parties of the time within which responses may be filed to this report and of the time and place fixed by the court for considering the report and any objections and responses thereto.

Respectfully submitted this 3rd day of June, 1977.

A. L. Monette

A. L. Monette
Water Commissioner

FMIC EXHIBIT 22.13

STATEMENT OF POLICIES AND PRINCIPLES

REGARDING THE USE OF CAP FACILITIES

TO FACILITATE INDIAN WATER RIGHTS

SETTLEMENTS

ADOPTED BY THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS - March 3, 1988

STATEMENT OF POLICIES AND PRINCIPLES REGARDING THE USE OF CAP FACILITIES TO FACILITATE INDIAN WATER RIGHTS SETTLEMENTS

Policy

The Board of Directors of the Central Arizona Water Conservation District recognizes that unresolved Indian water rights claims are a constraint on orderly and efficient water management. The Board recognizes that a broad public benefit is a potential result of resolution of these claims, and wishes to lend the resources of the District to efforts to realize those benefits while protecting the ability of the CAP to accomplish its primary purpose of delivering CAP water to CAP customers. Accordingly, we support and direct the use of CAP facilities to facilitate Indian water rights settlements which we find to be consistent with our basic responsibilities. As a general condition, we find that such settlements should be implemented and given priority over non-Project uses of CAP facilities, subject to the following principles:

Principles:

1. Water Supply

    a) There should be no adverse impact on water supplies otherwise available for CAP.

    b) There should be no adverse impact on CAP users that are not parties to the settlement.

    c) Supplemental water supplies delivered through CAP facilities should share losses pro rata with all other water supplies delivered through such facilities.

2. System Capacity

There should be no reduction in the delivery capacity otherwise available to existing CAP subcontractors (i.e., there should be no change required in the anticipated water delivery schedules of those that are not parties to the settlement).

3. Navajo Power

a) There must be no reduction in Navajo Surplus available for long term marketing under the Navajo Marketing Plan.

b) The settlement should not interfere with the District's receiving optimum value from the sale of short term Navajo Surplus.

c) At no time may the power costs to settlement participants be less than those paid by CAP water users generally.

4. O&M Costs

The settlement should provide for the recovery of an appropriate charge to offset fixed O&M costs associated with the delivery of settlement water supplies.

5. Repayment

Water delivered through Project facilities to facilitate Indian settlements (such as replacement water and water leased by Indians to non-Indians) should be treated as if it were Project water

delivered to Indian entities for purposes of determining CAWCD's repayment obligation.

Subject to the foregoing principles, each proposed settlement should be considered on its own merits. The Board's approval of any particular settlement shall not be regarded as establishing any precedent for any other settlement.